

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 193

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE EMERGENCY COMMU-
2 NICATIONS FEES; AMENDING SECTION 31-4809, IDAHO CODE, TO PROVIDE THAT
3 CERTAIN FEES SHALL BE DEPOSITED INTO DESIGNATED EMERGENCY COMMUNICA-
4 TIONS FUNDS; AMENDING SECTION 31-4813, IDAHO CODE, TO DEFINE TERMS, TO
5 PROVIDE FOR THE IMPOSITION OF PREPAID WIRELESS E911 FEES, TO PROVIDE
6 FOR THE COLLECTION OF FEES, TO PROVIDE FOR THE DISCLOSURE OF FEES, TO
7 CLARIFY THOSE RETAIL TRANSACTIONS TREATED AS OCCURRING IN THE STATE OF
8 IDAHO, TO SPECIFY CONSUMER AND SELLER LIABILITY, TO PROVIDE THAT FEES
9 SHALL NOT BE INCLUDED IN THE BASE FOR MEASURING ANY CHARGES IMPOSED
10 BY THE STATE, POLITICAL SUBDIVISION OF THE STATE OR INTERGOVERNMENTAL
11 AGENCY, TO PROVIDE FOR THE INCREASE OR REDUCTION OF FEES, TO PROVIDE FOR
12 THE APPLICATION OF THE IMPOSED PERCENTAGE BY THE SELLER, TO PROVIDE FOR
13 THE REMITTANCE OF FEES TO THE IDAHO STATE TAX COMMISSION, TO PROVIDE
14 THAT THE IDAHO STATE TAX COMMISSION SHALL ESTABLISH CERTAIN PROCEDURES,
15 TO PROVIDE FOR SELLER RETENTION OF A PERCENTAGE OF FEES, TO PROVIDE FOR
16 THE APPLICABILITY OF SPECIFIED AUDIT AND APPEAL PROCEDURES, TO PROVIDE
17 THAT THE IDAHO STATE TAX COMMISSION SHALL PAY REMITTED FEES OVER TO
18 THE IDAHO EMERGENCY COMMUNICATIONS FUND, TO PROVIDE FOR RETENTION OF A
19 PERCENTAGE OF FEES BY THE IDAHO STATE TAX COMMISSION, TO RESTRICT CER-
20 TAIN LIABILITY, TO PROVIDE FOR THE APPLICABILITY OF SPECIFIED LIABILITY
21 PROVISIONS AND TO PROHIBIT THE IMPOSITION OF ADDITIONAL E911 FUNDING
22 OBLIGATIONS; AND AMENDING SECTION 31-4818, IDAHO CODE, TO PROVIDE THAT
23 THE IDAHO EMERGENCY COMMUNICATIONS FUND SHALL INCLUDE MONEYS FROM SPEC-
24 IFIED FEES AND TO PROVIDE FOR THE DISTRIBUTION OF CERTAIN FUNDS; AND
25 PROVIDING AN EFFECTIVE DATE.
26

27 Be It Enacted by the Legislature of the State of Idaho:

28 SECTION 1. That Section 31-4809, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 31-4809. FUND AND APPROPRIATIONS. The county treasurer of each county
31 or the administrator for a 911 service area in which an emergency communica-
32 tions system has been established pursuant to this chapter shall establish
33 a fund to be designated the emergency communications fund in which all fees
34 collected pursuant to this chapter, including fees distributed pursuant to
35 section 31-4818(6), Idaho Code, shall be deposited and such fund shall be
36 used exclusively for the purposes of this chapter. The moneys collected and
37 the interest earned in this fund shall be appropriated by the county commis-
38 sioners, or governing board, for expenses incurred by the emergency communi-
39 cations system as set forth in an annual budget prepared by the joint powers
40 board, or in their absence, the county commissioners and incorporated into
41 the annual county budget.

1 SECTION 2. That Section 31-4813, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 31-4813. ~~PREPAID CALLING CARDS WIRELESS TELECOMMUNICATIONS SERVICE~~
4 ~~EMERGENCY COMMUNICATIONS FEE. The imposition of the emergency communica-~~
5 ~~tions fee shall not apply to the prepaid calling cards for all forms of access~~
6 ~~fees. Prepaid wireline, wireless and VoIP phones with a service address or~~
7 ~~place of primary use within Idaho are not considered prepaid calling cards.~~

8 (1) As used in this section:

9 (a) "Consumer" means a person who purchases prepaid wireless telecom-
10 munications service in a retail transaction;

11 (b) "Prepaid wireless E911 fee" means the fee imposed by subsection
12 (2) (a) of this section on prepaid wireless telecommunications service
13 that is required to be collected by a seller from a consumer;

14 (c) "Prepaid wireless telecommunications service" means a wireless
15 telecommunications service that allows a caller to dial 911 to access
16 the 911 system, which service must be paid for in advance and is sold in
17 predetermined units or dollars;

18 (d) "Provider" means a person that provides prepaid wireless telecom-
19 munications service pursuant to a license issued by the federal commu-
20 nications commission;

21 (e) "Retail transaction" means the purchase of prepaid wireless
22 telecommunications service from a seller for any purpose other than
23 resale;

24 (f) "Seller" means a person who sells prepaid wireless telecommunica-
25 tions service to another person;

26 (g) "Tax commission" means the Idaho state tax commission.

27 (2) (a) There is hereby imposed a prepaid wireless E911 fee in the
28 amount of two and one-half percent (2.5%) of the sales price on each
29 retail transaction.

30 (b) The prepaid wireless E911 fee shall be collected by the seller from
31 the consumer with respect to each retail transaction occurring in this
32 state. The amount of the prepaid wireless E911 fee shall be either sep-
33 arately stated on an invoice, receipt or other similar document that is
34 provided to the consumer by the seller, or otherwise disclosed to the
35 consumer.

36 (c) For purposes of paragraph (b) of this subsection, a retail transac-
37 tion is considered to have occurred in Idaho if:

38 (i) The retail transaction is effected in person by the customer
39 at a seller's location in Idaho;

40 (ii) When subparagraph (i) of this paragraph does not apply, the
41 prepaid wireless telecommunications service is delivered to the
42 subscriber at an Idaho address provided to the retailer;

43 (iii) When subparagraphs (i) and (ii) of this paragraph do not ap-
44 ply, the retailer's records that are maintained in the ordinary
45 course of business indicate that the subscriber's address is in
46 Idaho and the records are not made or kept in bad faith;

47 (iv) When subparagraphs (i) through (iii) of this paragraph do not
48 apply, the subscriber gives an Idaho address during the consumma-
49 tion of the sale, including the subscriber's payment instrument if

1 no other address is available, and the address is not given in bad
2 faith;

3 (v) When subparagraphs (i) through (iv) of this paragraph do not
4 apply, the subscriber's mobile telephone number is associated
5 with an Idaho location.

6 (d) The prepaid wireless E911 fee is the liability of the consumer and
7 not of the seller or of any provider, except that the seller shall be li-
8 able to remit all prepaid wireless E911 fees that the seller collects or
9 is required to collect from consumers as provided pursuant to the provi-
10 sions of this section, including all such fees that the seller is deemed
11 to collect where the amount of the fee has not been separately stated on
12 an invoice, receipt or other similar document provided to the consumer
13 by the seller.

14 (e) The amount of the prepaid wireless E911 fee that is collected by a
15 seller from a consumer, if such amount is separately stated on an in-
16 voice, receipt or other similar document provided to the consumer by the
17 seller, shall not be included in the base for measuring any tax, fee,
18 surcharge or other charge that is imposed by this state, any political
19 subdivision of this state or any intergovernmental agency.

20 (f) The prepaid wireless E911 fee shall be proportionately increased or
21 reduced, as applicable, upon any change to the fees imposed pursuant to
22 the provisions of sections 31-4804 and 31-4819, Idaho Code. The amount
23 of the prepaid wireless E911 fee shall be the percentage calculated by
24 adding the amounts authorized pursuant to the provisions of sections
25 31-4804 and 31-4819, Idaho Code, and then dividing such sum by fifty
26 dollars (\$50.00). Such increase or reduction shall be effective on the
27 effective date of the change to the fees imposed pursuant to the pro-
28 visions of sections 31-4804 and 31-4819, Idaho Code, or if later, the
29 first day of the first calendar month to occur at least sixty (60) days
30 after the enactment of the change to fees imposed pursuant to the provi-
31 sions of sections 31-4804 and 31-4819, Idaho Code. The tax commission
32 shall provide not less than thirty (30) days of advance notice of such
33 increase or reduction on its website.

34 (g) When prepaid wireless telecommunications service is sold with one
35 (1) or more other products or services for a single, nonitemized price,
36 then the percentage specified in paragraph (a) of this subsection shall
37 apply to the entire nonitemized price unless the seller elects to apply
38 such percentage to:

39 (i) If the amount of the prepaid wireless telecommunications ser-
40 vice is disclosed to the consumer as a dollar amount, such dollar
41 amount; or

42 (ii) If the seller can identify the portion of the price that is
43 attributable to the prepaid wireless telecommunications service
44 by reasonable and verifiable standards from its books and records
45 that are kept in the regular course of business for other purposes
46 including, but not limited to, non-tax purposes, such portion.
47 Provided however, if a minimal amount of prepaid wireless telecom-
48 munications service is sold with a prepaid wireless device for a
49 single, nonitemized price, then the seller may elect not to apply
50 the percentage specified in paragraph (a) of this subsection to

1 such transaction. For purposes of this subparagraph, an amount of
 2 service denominated as ten (10) minutes or less, or five dollars
 3 (\$5.00) or less, is minimal.

4 (3) (a) Prepaid wireless E911 fees collected by sellers shall be re-
 5 mitted to the tax commission at the times and in the manner provided by
 6 chapter 36, title 63, Idaho Code, with respect to the sales tax. The tax
 7 commission shall establish registration, reporting and payment pro-
 8 cedures that substantially coincide with the registration and payment
 9 procedures that apply to the sales tax pursuant to the provisions of
 10 chapter 36, title 63, Idaho Code.

11 (b) A seller shall be permitted to deduct and retain three percent (3%)
 12 of prepaid wireless E911 fees that are collected by the seller from con-
 13 sumers.

14 (c) The following provisions of chapter 36, title 63, Idaho Code, with
 15 respect to sales tax shall apply to the prepaid wireless E911 fee:

16 (i) Audit and appeal procedures;

17 (ii) Collection, enforcement, penalties and interest; and

18 (iii) Statute of limitations and refunds of fees paid erro-
 19 neously.

20 The tax commission shall have the authority to promulgate administra-
 21 tive rules applicable to the prepaid wireless E911 fee. Such rules
 22 shall, to the extent practicable, minimize administrative burdens on
 23 sellers by incorporating existing provisions of chapter 36, title 63,
 24 Idaho Code, that apply to audits, appeals, collection, enforcement,
 25 penalties, interest, statute of limitations and refunds of fees paid
 26 erroneously.

27 (d) The tax commission shall establish procedures by which a seller of
 28 prepaid wireless telecommunications service may document that a sale is
 29 not a retail transaction, which procedures shall substantially coin-
 30 cide with the procedures for documenting sale for resale transactions
 31 pursuant to the provisions of chapter 36, title 63, Idaho Code, with re-
 32 spect to the sales tax.

33 (e) The tax commission shall distribute revenue from the prepaid wire-
 34 less E911 fees as follows:

35 (i) An amount of money shall be distributed to the state refund
 36 account sufficient to pay current refund claims. All refunds au-
 37 thorized under this chapter by the tax commission shall be paid
 38 through the state refund account; and

39 (ii) Pay all remaining remitted prepaid wireless E911 fees over
 40 to the Idaho emergency communications fund provided for in section
 41 31-4818(1), Idaho Code, within thirty (30) days of receipt.

42 The tax commission may deduct an amount, not to exceed two percent
 43 (2%) of remitted fees, to reimburse its actual costs of administering
 44 the collection and remittance of prepaid wireless E911 fees. The tax
 45 commission may also retain an amount, not to exceed seventy thousand
 46 dollars (\$70,000), of remitted revenues in the fiscal year 2014 only for
 47 programming and one-time implementation costs.

48 (4) (a) No provider or seller of prepaid wireless telecommunications
 49 service shall be liable for damages to any person resulting from or in-
 50 curring in connection with the provision of or failure to provide 911 or

1 E911 service, or for identifying or failing to identify, the telephone
 2 number, address, location or name associated with any person or device
 3 that is accessing or attempting to access 911 or E911 service.

4 (b) No provider or seller of prepaid wireless telecommunications
 5 service shall be liable for damages to any person resulting from or in-
 6 curring in connection with the provision of any lawful assistance to any
 7 investigative or law enforcement officer of the United States, this or
 8 any other state or any political subdivision of this or any other state,
 9 in connection with any lawful investigation or other law enforcement
 10 activity by such law enforcement officer.

11 (c) In addition to the protection from liability provided by paragraphs
 12 (a) and (b) of this subsection, each provider and seller of prepaid
 13 wireless telecommunications service is covered by the liability provi-
 14 sions of section 31-4812, Idaho Code.

15 (5) The prepaid wireless E911 fee imposed pursuant to this section
 16 shall be the only E911 funding obligation imposed with respect to pre-
 17 paid wireless telecommunications service in this state, and no tax, fee,
 18 surcharge or other charge shall be imposed by this state, any political
 19 subdivision of this state or any intergovernmental agency, for E911 funding
 20 purposes, upon any provider, seller or consumer with respect to the sale,
 21 purchase, use or provision of prepaid wireless telecommunications service.

22 SECTION 3. That Section 31-4818, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 31-4818. IDAHO EMERGENCY COMMUNICATIONS FUND -- ESTABLISHMENT AND AD-
 25 MINISTRATION. (1) There is hereby created within the treasury of the state
 26 of Idaho a separate fund known as the Idaho emergency communications fund,
 27 which shall consist of moneys received from counties, cities, consolidated
 28 emergency communications operations, the fee imposed pursuant to the provi-
 29 sions of section 31-4813, Idaho Code, grants, donations, gifts and revenues
 30 from any other source to support the delivery of consolidated emergency com-
 31 munications systems.

32 (2) Moneys in the fund are hereby continuously appropriated and shall
 33 be utilized exclusively for the purposes set forth in this chapter as deter-
 34 mined by the commission.

35 (3) Annually, at the direction of the commission, not more than one per-
 36 cent (1%) of the total emergency communications fees collected in the state
 37 of Idaho is hereby dedicated for and shall be placed in the fund on a quar-
 38 terly basis by county, city or consolidated emergency communications sys-
 39 tems. The commission, on an annual basis, shall prepare a budget indicating
 40 that portion of the fee necessary for the continuous operation of the commis-
 41 sion to achieve the purposes of this chapter.

42 (4) The commission shall authorize disbursement of moneys in the fund
 43 to eligible entities.

44 (5) The state treasurer shall invest idle moneys in the fund and inter-
 45 est earned from such investments shall be returned to the fund.

46 (6) Funds received from the fee imposed pursuant to the provisions of
 47 section 31-4813, Idaho Code, shall be maintained by the Idaho emergency com-
 48 munications commission and used solely for the design, migration, implemen-

1 tation and operation of a "Next Generation 911 System" in accordance and com-
2 pliance with the new and emerging technology act of 2006.

3 (7) This act is necessary for the immediate preservation of the public
4 peace, health, safety or support of the state government and its existing
5 public institutions and takes effect January 1, 2014.

6 SECTION 4. This act shall be in full force and effect on and after Jan-
7 uary 1, 2014.