
SUBSTITUTE SENATE BILL 5348

State of Washington

62nd Legislature

2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Nelson and Delvin)

READ FIRST TIME 02/18/11.

1 AN ACT Relating to the taxation of prepaid wireless
2 telecommunications service; amending RCW 82.14B.030; reenacting and
3 amending RCW 82.14B.020; adding a new chapter to Title 82 RCW; and
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 82.14B.020 and 2010 1st sp.s. c 19 s 2 are each
7 reenacted and amended to read as follows:

8 As used in this chapter:

9 (1) "Emergency services communication system" means a multicounty
10 or countywide communications network, including an enhanced 911
11 emergency communications system, which provides rapid public access for
12 coordinated dispatching of services, personnel, equipment, and
13 facilities for police, fire, medical, or other emergency services.

14 (2) "Enhanced 911 emergency communications system" means a public
15 communications system consisting of a network, database, and on-
16 premises equipment that is accessed by dialing or accessing 911 and
17 that enables reporting police, fire, medical, or other emergency
18 situations to a public safety answering point. The system includes the
19 capability to selectively route incoming 911 voice or data to the

1 appropriate public safety answering point that operates in a defined
2 911 service area and the capability to automatically display the name,
3 address, and telephone number of incoming 911 voice or data at the
4 appropriate public safety answering point. "Enhanced 911 emergency
5 communications system" includes the modernization to next generation
6 911 systems.

7 (3) "Interconnected voice over internet protocol service" has the
8 same meaning as provided by the federal communications commission in 47
9 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by
10 the department.

11 (4) "Interconnected voice over internet protocol service line"
12 means an interconnected voice over internet protocol service that
13 offers an active telephone number or successor dialing protocol
14 assigned by a voice over internet protocol provider to a voice over
15 internet protocol service customer that has inbound and outbound
16 calling capability, which can directly access a public safety answering
17 point when such a voice over internet protocol service customer has a
18 place of primary use in the state.

19 (5) "Local exchange company" has the meaning ascribed to it in RCW
20 80.04.010.

21 (6) "Place of primary use" means the street address representative
22 of where the subscriber's use of the radio access line or
23 interconnected voice over internet protocol service line occurs, which
24 must be:

25 (a) The residential street address or primary business street
26 address of the subscriber; and

27 (b) In the case of radio access lines, within the licensed service
28 area of the home service provider.

29 (7) "Prepaid wireless telecommunications service" has the same
30 meaning as provided for "prepaid wireless calling service" in RCW
31 82.04.065.

32 (8) "Private telecommunications system" has the meaning ascribed to
33 it in RCW 80.04.010.

34 ((+8)) (9) "Radio access line" means the telephone number assigned
35 to or used by a subscriber for two-way local wireless voice service
36 available to the public for hire from a radio communications service
37 company. Radio access lines include, but are not limited to, radio-
38 telephone communications lines used in cellular telephone service,

1 personal communications services, and network radio access lines, or
2 their functional and competitive equivalent. Radio access lines do not
3 include lines that provide access to one-way signaling service, such as
4 paging service, or to communications channels suitable only for data
5 transmission, or to nonlocal radio access line service, such as
6 wireless roaming service, or to a private telecommunications system.

7 ~~((+9+))~~ (10) "Radio communications service company" has the meaning
8 ascribed to it in RCW 80.04.010, except that it does not include radio
9 paging providers. It does include those persons or entities that
10 provide commercial mobile radio services, as defined by 47 U.S.C. Sec.
11 332(d)(1), and both facilities-based and nonfacilities-based resellers.

12 ~~((+10+))~~ (11) "Subscriber" means the retail purchaser of
13 telecommunications service, a competitive telephone service, or
14 interconnected voice over internet protocol service.

15 ~~((+11+))~~ (12) "Switched access line" means the telephone service
16 line which connects a subscriber's main telephone(s) or equivalent main
17 telephone(s) to the local exchange company's switching office.

18 **Sec. 2.** RCW 82.14B.030 and 2010 1st sp.s. c 19 s 3 are each
19 amended to read as follows:

20 (1) The legislative authority of a county may impose a county
21 enhanced 911 excise tax on the use of switched access lines in an
22 amount not exceeding seventy cents per month for each switched access
23 line. The amount of tax must be uniform for each switched access line.
24 Each county must provide notice of the tax to all local exchange
25 companies serving in the county at least sixty days in advance of the
26 date on which the first payment is due. The tax imposed under this
27 subsection must be remitted to the department by local exchange
28 companies on a tax return provided by the department. The tax must be
29 deposited in the county enhanced 911 excise tax account as provided in
30 RCW 82.14B.063.

31 (2) The legislative authority of a county may also impose a county
32 enhanced 911 excise tax on the use of radio access lines whose place of
33 primary use is located within the county in an amount not exceeding
34 seventy cents per month for each radio access line. The amount of tax
35 must be uniform for each radio access line. The county must provide
36 notice of the tax to all radio communications service companies serving
37 in the county at least sixty days in advance of the date on which the

1 first payment is due. The tax imposed under this section must be
2 remitted to the department by radio communications service companies,
3 including those companies that resell radio access lines, on a tax
4 return provided by the department. The tax must be deposited in the
5 county enhanced 911 excise tax account as provided in RCW 82.14B.063.

6 (3)(a) The legislative authority of a county may impose a county
7 enhanced 911 excise tax on the use of interconnected voice over
8 internet protocol service lines in an amount not exceeding seventy
9 cents per month for each interconnected voice over internet protocol
10 service line. The amount of tax must be uniform for each line and must
11 be levied on no more than the number of voice over internet protocol
12 service lines on an account that are capable of simultaneous
13 unrestricted outward calling to the public switched telephone network.

14 (b) The interconnected voice over internet protocol service company
15 must use the place of primary use of the subscriber to determine which
16 county's enhanced 911 excise tax applies to the service provided to the
17 subscriber.

18 (c) The tax imposed under this section must be remitted to the
19 department by interconnected voice over internet protocol service
20 companies on a tax return provided by the department.

21 (d) The tax must be deposited in the county enhanced 911 excise tax
22 account as provided in RCW 82.14B.063.

23 (e) To the extent that a local exchange carrier and an
24 interconnected voice over internet protocol service company
25 contractually jointly provide a single service line, only one service
26 company is responsible for remitting the enhanced 911 excise taxes, and
27 nothing in this section precludes service companies who jointly provide
28 service from agreeing by contract which of them (~~shall~~) must remit
29 the taxes collected.

30 (4) Counties imposing a county enhanced 911 excise tax must provide
31 an annual update to the enhanced 911 coordinator detailing the
32 proportion of their county enhanced 911 excise tax that is being spent
33 on:

34 (a) Efforts to modernize their existing enhanced 911 communications
35 system; and

36 (b) Enhanced 911 operational costs.

37 (5) A state enhanced 911 excise tax is imposed on all switched
38 access lines in the state. The amount of tax may not exceed twenty-

1 five cents per month for each switched access line. The tax must be
2 uniform for each switched access line. The tax imposed under this
3 subsection must be remitted to the department by local exchange
4 companies on a tax return provided by the department. Tax proceeds
5 must be deposited by the treasurer in the enhanced 911 account created
6 in RCW 38.52.540.

7 (6) A state enhanced 911 excise tax is imposed on all radio access
8 lines whose place of primary use is located within the state in an
9 amount of twenty-five cents per month for each radio access line. The
10 tax must be uniform for each radio access line. The tax imposed under
11 this section must be remitted to the department by radio communications
12 service companies, including those companies that resell radio access
13 lines, on a tax return provided by the department. Tax proceeds must
14 be deposited by the treasurer in the enhanced 911 account created in
15 RCW 38.52.540. The tax imposed under this section is not subject to
16 the state sales and use tax or any local tax.

17 (7) A state enhanced 911 excise tax is imposed on all
18 interconnected voice over internet protocol service lines in the state.
19 The amount of tax may not exceed twenty-five cents per month for each
20 interconnected voice over internet protocol service line whose place of
21 primary use is located in the state. The amount of tax must be uniform
22 for each line and must be levied on no more than the number of voice
23 over internet protocol service lines on an account that are capable of
24 simultaneous unrestricted outward calling to the public switched
25 telephone network. The tax imposed under this subsection must be
26 remitted to the department by interconnected voice over internet
27 protocol service companies on a tax return provided by the department.
28 Tax proceeds must be deposited by the treasurer in the enhanced 911
29 account created in RCW 38.52.540.

30 (8)(a) For calendar year 2011, the taxes imposed by subsections (5)
31 and (7) of this section must be set at their maximum rate. By August
32 31, 2011, and by August 31st of each year thereafter, the state
33 enhanced 911 coordinator must recommend the level for the next year of
34 the state enhanced 911 excise tax imposed by subsections (5) and (7) of
35 this section, based on a systematic cost and revenue analysis, to the
36 utilities and transportation commission. The commission must by the
37 following October 31st determine the level of the state enhanced 911

1 excise taxes imposed by subsections (5) and (7) of this section for the
2 following year.

3 (b) Beginning in calendar year 2012, the systematic cost and
4 revenue analysis includes the proceeds of revenues from the tax imposed
5 by chapter 82.--- RCW (the new chapter created in section 8 of this
6 act).

7 (9) The excise tax imposed by this section does not apply to
8 prepaid wireless telecommunications service, which is subject to the
9 tax imposed under chapter 82.--- RCW (the new chapter created in
10 section 8 of this act).

11 NEW SECTION. Sec. 3. The following definitions in this section
12 apply throughout this chapter unless the context clearly requires
13 otherwise.

14 (1) "Consumer" means a person who purchases prepaid wireless
15 telecommunications service in a retail transaction.

16 (2) "Prepaid wireless enhanced 911 excise tax" means the tax that
17 is required to be collected by a seller from a consumer under this
18 chapter.

19 (3) "Prepaid wireless telecommunications service" has the same
20 meaning as "prepaid wireless calling service" as provided in RCW
21 82.04.065.

22 (4) "Provider" means a person that provides prepaid wireless
23 telecommunications service pursuant to a license issued by the federal
24 communications commission.

25 (5) "Retail transaction" means the purchase of prepaid wireless
26 telecommunications service from a seller for any purpose other than
27 resale.

28 (6) "Seller" means a person who sells prepaid wireless
29 telecommunications service to another person.

30 NEW SECTION. Sec. 4. (1) There is imposed a prepaid wireless
31 enhanced 911 excise tax of two and one-half percent of the sales price
32 on each retail transaction.

33 (2)(a) The prepaid wireless enhanced 911 excise tax must be
34 collected by the seller from the consumer with respect to each retail
35 transaction occurring in this state. When practicable, the amount of
36 the prepaid wireless enhanced 911 excise tax must be separately stated

1 on an invoice, receipt, or other similar document that is provided to
2 the consumer by the seller. When a separate disclosure to the consumer
3 is not practicable, the seller may prominently display a sign notifying
4 consumers of the enhanced 911 excise tax.

5 (b) For purposes of this subsection, the transaction occurs in this
6 state if it is sourced to this state under the provisions of RCW
7 82.32.520(3)(c).

8 (3) The prepaid wireless enhanced 911 excise tax is the liability
9 of the consumer and not of the seller or of any provider, except that
10 the seller is liable to remit all prepaid wireless enhanced 911 excise
11 taxes that the seller collects from consumers as provided in section 5
12 of this act, including all such excise taxes that the seller is deemed
13 to collect where the amount of the tax has not been separately stated
14 on an invoice, receipt, or other similar document provided to the
15 consumer by the seller.

16 (4) The amount of the prepaid wireless enhanced 911 excise tax that
17 is collected by a seller from a consumer, if such amount is separately
18 stated on an invoice, receipt, or other similar document provided to
19 the consumer by the seller, may not be included in the base for
20 measuring any tax, fee, surcharge, or other charge that is imposed by
21 this state, any political subdivision of this state, or any
22 intergovernmental agency.

23 (5) When prepaid wireless telecommunications service is sold with
24 one or more other products or services for a single, nonitemized price,
25 then the tax under this chapter is imposed on the entire nonitemized
26 price unless the seller elects to impose the tax on:

27 (a) A dollar amount, if the amount of the prepaid wireless
28 telecommunications service is disclosed to the consumer as a dollar
29 amount; or

30 (b) The portion of the price that is attributable to the prepaid
31 wireless telecommunications service by reasonable and verifiable
32 standards from its books and records that are kept in the regular
33 course of business for other purposes including, but not limited to,
34 nontax purposes, if the seller can identify such portion.

35 (6) If a minimal amount of prepaid wireless telecommunications
36 service is sold with a prepaid wireless device for a single,
37 nonitemized price, then the seller may elect not to impose the tax

1 under this chapter on such sale. For purposes of this subsection,
2 "minimal" means an amount of service denominated as ten minutes or
3 less, or five dollars or less.

4 NEW SECTION. **Sec. 5.** (1) Prepaid wireless enhanced 911 excise
5 taxes collected by sellers under this chapter must be remitted to the
6 department at the times and in the manner provided by chapter 82.08 RCW
7 with respect to the sales tax imposed under chapter 82.08 RCW. The
8 department must establish registration and payment procedures that
9 substantially coincide with the registration and payment procedures
10 that apply to the tax imposed under chapter 82.08 RCW.

11 (2) A seller is permitted to deduct and retain three percent of
12 prepaid wireless enhanced 911 excise taxes that are collected by the
13 seller from consumers.

14 (3) The audit and appeal procedures applicable to the retail sales
15 tax imposed under chapter 82.08 RCW apply to prepaid wireless enhanced
16 911 excise taxes.

17 (4) The department must establish procedures by which a seller of
18 prepaid wireless telecommunications service may document that a sale is
19 not a retail transaction, which procedures must substantially coincide
20 with the procedures for documenting sale for resale transactions for
21 purposes of the retail sales tax imposed under chapter 82.08 RCW.

22 (5) The department must transfer all remitted prepaid wireless
23 enhanced 911 excise taxes as directed by this chapter within thirty
24 days of receipt. Funds must be distributed as follows:

25 (a) Seventy-three and seven-tenths percent must be transferred to
26 the county enhanced 911 excise tax account as provided in RCW
27 82.14B.063. Such funds must be distributed to counties in the same
28 proportion as the distribution of funds under RCW 82.14B.063 as of
29 October 1, 2011, and are subject to the provisions of RCW 82.14B.050;
30 and

31 (b) Twenty-six and three-tenths percent must be transferred to the
32 enhanced 911 account created in RCW 38.52.540.

33 NEW SECTION. **Sec. 6.** (1) A provider or seller of prepaid wireless
34 telecommunications service is not liable for damages to any person
35 resulting from or incurred in connection with the provision of, or
36 failure to provide, 911 or enhanced 911 service, or for identifying, or

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

4 (2) A provider or seller of prepaid wireless telecommunications
5 service is not liable for damages to any person resulting from or
6 incurred in connection with the provision of any lawful assistance to
7 any investigative or law enforcement officer of the United States, this
8 or any other state, or any political subdivision of this or any other
9 state, in connection with any lawful investigation or other law
10 enforcement activity by such law enforcement officer.

11 (3) In addition to the provisions of this chapter, a provider or
12 seller of prepaid wireless telecommunications service is subject to the
13 provisions of RCW 38.52.550.

14 NEW SECTION. **Sec. 7.** The prepaid wireless enhanced 911 excise tax
15 imposed by this chapter is the only enhanced 911 funding obligation
16 imposed with respect to prepaid wireless telecommunications service in
17 this state, and no other tax, fee, surcharge, or charge may be imposed
18 by this state, any political subdivision of this state, or any
19 intergovernmental agency, for enhanced 911 funding purposes, upon any
20 provider, seller, or consumer with respect to the sale, purchase, use,
21 or provision of prepaid wireless telecommunications service.

22 NEW SECTION. **Sec. 8.** Sections 3 through 7 of this act constitute
23 a new chapter in Title 82 RCW.

24 NEW SECTION. **Sec. 9.** This act takes effect October 1, 2011.

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