

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1003

Introduced by Smith, 14.

Read first time January 15, 2016

Committee:

1 A BILL FOR AN ACT relating to telecommunications; to amend sections
2 86-328, 86-903, 86-904, and 86-905, Reissue Revised Statutes of
3 Nebraska; to change a provision of the Nebraska Telecommunications
4 Universal Service Fund Act; to change the prepaid wireless surcharge
5 determination under the Prepaid Wireless Surcharge Act; to harmonize
6 provisions; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-328, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-328 (1) Annually the commission shall hold a public hearing to
4 determine the level of the fund necessary to carry out the Nebraska
5 Telecommunications Universal Service Fund Act. The commission shall
6 publish notice of the hearing in at least one newspaper of general
7 circulation in the state at least once each week for two consecutive
8 weeks before the hearing. After the hearing, the commission shall
9 determine the amount of the fund for the following year, including a
10 reasonable reserve. In the initial year of the fund's operation, the
11 commission shall determine the amount of the fund to be equivalent to the
12 amount which, in the commission's judgment, after careful analysis, is
13 necessary to keep approximately ninety-six percent of Nebraska households
14 subscribed to local telecommunications service.

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

18 (3) For purposes of prepaid wireless telecommunications service,
19 universal service fund contribution and surcharge obligations shall be
20 governed by the Prepaid Wireless Surcharge Act.

21 Sec. 2. Section 86-903, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 86-903 (1) The Department of Revenue shall determine the prepaid
24 wireless surcharge annually, effective January 1, based on the charges
25 described in subsection (2) of this section as in effect on the preceding
26 July 1. The department shall provide not less than ninety days' advance
27 notice of any change in the prepaid wireless surcharge on the
28 department's web site.

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

31 (a) The percentage obtained by dividing (i) the amount of the

1 wireless E-911 surcharge authorized under subdivision (1)(b) of section
2 86-457 by (ii) fifty;~~and~~

3 (b) The percentage obtained by dividing (i) the amount of the
4 Nebraska Telecommunications Relay System Fund surcharge set by the Public
5 Service Commission pursuant to the Telecommunications Relay System Act by
6 (ii) fifty; and -

7 (c) The percentage obtained by multiplying (i) the Nebraska
8 Telecommunications Universal Service Fund surcharge percentage rate set
9 by the Public Service Commission by (ii) the inverse of the Federal
10 Communications Commission safe harbor percentage for determining the
11 interstate portion of a fixed monthly wireless charge.

12 (3) Beginning January 1, 2013, each seller shall collect the prepaid
13 wireless surcharge from the consumer with respect to each retail
14 transaction occurring in this state. The seller shall disclose the amount
15 of the prepaid wireless surcharge either separately on an invoice,
16 receipt, or other similar document that is provided to the consumer by
17 the seller or otherwise. A retail transaction that is effected in person
18 by a consumer at a business location of the seller shall be treated as
19 occurring in this state if that business location is in this state, and
20 any other retail transaction shall be treated as occurring in this state
21 if the retail transaction is treated as occurring in this state for
22 purposes of section 77-2703.

23 (4) The prepaid wireless surcharge is the liability of the consumer
24 and not of the seller or of any provider, except that the seller shall be
25 liable to remit all prepaid wireless surcharges that the seller collects
26 from consumers as provided in section 86-904, including all such charges
27 that the seller is deemed to collect when the amount of the charge has
28 not been separately stated on an invoice, receipt, or other similar
29 document provided to the consumer by the seller.

30 (5) The amount of the prepaid wireless surcharge that is collected
31 by a seller from a consumer, whether or not such amount is separately

1 stated on an invoice, receipt, or other similar document provided to the
2 consumer by the seller, shall not be included in the base for measuring
3 any tax, fee, surcharge, or other charge that is imposed by this state,
4 any political subdivision of this state, or any intergovernmental agency.

5 (6) For purposes of subsection (3) of this section, when prepaid
6 wireless telecommunications service is sold with one or more other
7 products or services for a single, non-itemized price, the seller shall
8 elect to treat the price of the prepaid wireless telecommunications
9 service (a) as such entire non-itemized price, (b) if the amount of
10 prepaid wireless telecommunications service is disclosed to the consumer
11 as a dollar amount, as such dollar amount, or (c) if the retailer can
12 identify the portion of the price that is attributable to the prepaid
13 wireless telecommunications service by reasonable and verifiable
14 standards from its books and records that are kept in the regular course
15 of business for other purposes, including, but not limited to, nontax
16 purposes, as such portion. If the amount of prepaid wireless
17 telecommunications service is denominated as ten minutes or less or as
18 five dollars or less, the seller may elect not to collect any prepaid
19 wireless surcharge with respect to the retail transaction.

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

22 86-904 (1) Sellers shall remit collected prepaid wireless surcharges
23 to the Department of Revenue at the times and in the manner provided in
24 the Nebraska Revenue Act of 1967 with respect to sales tax. The
25 department shall establish registration and payment procedures that
26 substantially coincide with the registration and payment procedures that
27 apply to sales tax.

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

31 (3) The audit and appeal procedures applicable to sales tax under

1 the Nebraska Revenue Act of 1967 shall apply to prepaid wireless
2 surcharges.

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

8 (5) After deducting an amount, not to exceed two percent of charges,
9 to be retained by the department to reimburse its direct costs of
10 administering the collection and remittance of prepaid wireless
11 surcharges, the department shall remit all collected prepaid wireless
12 surcharges to the State Treasurer for credit to the Enhanced Wireless 911
13 Fund, ~~and~~ the Nebraska Telecommunications Relay System Fund, ~~and~~ the
14 Nebraska Telecommunications Universal Service Fund, in the proportions
15 that the respective corresponding components of the prepaid wireless
16 surcharge under subsection (2) of section 86-903 bear to the total
17 prepaid wireless surcharge.

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

20 86-905 The prepaid wireless surcharge shall be the only funding
21 obligation imposed with respect to prepaid wireless telecommunications
22 service for E-911 service, ~~and~~ telecommunications relay service, ~~and~~
23 universal service in this state, and no tax, fee, surcharge, or other
24 charge shall be imposed by this state, any political subdivision of this
25 state, or any intergovernmental agency, for purposes of funding E-911
26 service, ~~or~~ telecommunications relay service, or universal service, upon
27 any provider, seller, or consumer with respect to the sale, purchase,
28 use, or provision of prepaid wireless telecommunications service.

29 Sec. 5. Original sections 86-328, 86-903, 86-904, and 86-905,
30 Reissue Revised Statutes of Nebraska, are repealed.