

February 12, 2015

The Honorable Joe Seiwert, Chairperson
House Committee on Utilities and Telecommunications
Statehouse, Room 481-W
Topeka, Kansas 66612

Dear Representative Seiwert:

SUBJECT: Fiscal Note for HB 2084 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2084 is respectfully submitted to your committee.

HB 2084 would enact the Prepaid Telephone Security Act. The bill would implement the Mobile Communications Devices Identification System (MCDIS) to be used as a central repository of information received by sellers of mobile communication devices from purchasers and maintained for providing information to law enforcement. The Department of Administration would issue a request for a proposal for an independent Mobile Data Communications Devices Identification System Data Manager, who would administer the MCDIS. The bill would establish the Mobile Communications Devices Identification System Fee Fund.

The bill would require all sellers of prepaid mobile phone devices and prepaid wireless communications service cards to require the purchaser to provide valid identification and record the purchaser's name, home address, and either the equipment identifier or the activation code when making a sale. HB 2084 would require compliance with specific rules for obtaining and recording the information required.

The bill would impose a civil penalty on any seller who willfully fails to report the required purchaser information. The civil penalty could not exceed \$100 for each failure to report. After five documented failures to report, the penalty would increase to \$1,000 per incident. All penalties recovered would be remitted to the State Treasurer with 50.0 percent being credited to the Attorney General's Litigation Fund and 50.0 percent to the Mobile Communications Devices Identification System Fee Fund.

Beginning on January 1, 2016, a fee would be collected on each retail transaction of mobile communication devices. The fee could not be greater than 1.0 percent of the cost of a retail transaction. The fee would be determined by the Department of Revenue, the Department of Administration, Kansas law enforcement agency heads, and the Mobile Communications Devices Identification System Data Manager. The fee would be credited to the Mobile Communications Devices Identification System Fee Fund. The Department of Revenue could retain up to \$70,000 during FY 2015 only to pay for programming and other one-time costs for establishing a system to collect the fee on mobile communication devices.

The Kansas Department of Revenue estimates that the fee created in HB 2084 would generate \$25,000 annually. The Department notes that because the fee would go into effect on January 1, 2016, the amount collected for FY 2016 would be \$12,500. The Department states that Kansas is a member of the Streamlined Sales Tax Agreement, which prohibits a state from having multiple sales tax items sold or to impose replacement taxes on certain defined goods and services, which include prepaid wireless calling services. The passage of HB 2084 could place the state out of compliance with the Agreement. As a result, the passage of the bill could result in the loss of \$51.8 million in FY 2016 from sales and compensating use tax revenues that would be attributed to the Agreement, if the state is determined to be out of compliance with the Agreement. Costs associated with setting up the fee for collection would be \$10,000. These costs are based on using the existing prepaid E-911 fee collection and reporting system. Taxpayer identification and fee remittance data would be maintained and made available to the Department of Administration.

The Office of Judicial Administration indicates passage of HB 2084 could increase the number of cases filed in district court, which would increase the time spent by district court judicial and non-judicial personnel in processing, researching, and hearing cases. Until the courts have had an opportunity to operate under the provisions of HB 2084, an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given.

The Department of Administration indicates it is unable to estimate the number of mobile communication devices that would be subject to the fee and cannot provide an accurate fiscal effect.

The Attorney General states that HB 2084 would require the agency to enforce the bill via civil lawsuit. The agency estimates there would be approximately ten cases per year at a cost of \$1,000 to \$5,000 in staff time and other resources per case to pursue violations of the bill. Additional costs could be incurred defending any legal challenges to the bill if it were enacted. Further, the Attorney General indicates passage of HB 2084 could be challenged in court, possibly on First or Fourth Amendment grounds, and in that event, the agency would need to consider outsourcing the defense of the bill. If the state were to lose the litigation, it could be ordered to pay attorneys' fees of the prevailing party, estimated at \$50,000 to \$200,000. Any fiscal effect associated with HB 2084 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Pam Fink, DofA
Mary Rinehart, Judiciary
Jack Smith, KDOR
Willie Prescott, Attorney General's Office