

SENATE BILL No. 30

By Committee on Utilities

1-18

1 AN ACT concerning 911 emergency services; prepaid wireless fees,
2 collection and distribution; amending K.S.A. 2010 Supp. 12-5322, 12-
3 5324, 12-5331 and 75-5133 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) There is hereby imposed a prepaid wireless 911
7 fee of 1.1% per retail transaction or, on and after the effective date of an
8 adjusted amount per retail transaction that is established under subsection
9 (f), such adjusted amount.

10 (b) The prepaid wireless 911 fee shall be collected by the seller from
11 the consumer with respect to each retail transaction occurring in this state.
12 The amount of the prepaid wireless 911 fee shall be either separately
13 stated on an invoice, receipt or other similar document that is provided to
14 the consumer by the seller, or otherwise disclosed to the consumer.

15 (c) For purposes of subsection (b), a retail transaction that is effected
16 in person by a consumer in a business location of the seller shall be
17 treated as occurring in this state if that business location is in this state,
18 and any other retail transaction shall be treated as occurring in this state if
19 the retail transaction is treated as occurring in this state for the purposes
20 of subsection (c)(3) of K.S.A. 79-3673, and amendments thereto.

21 (d) The prepaid wireless 911 fee is the liability of the consumer and
22 not of the seller except that the seller shall be liable to remit all prepaid
23 wireless 911 fees that the seller collects from consumers pursuant to this
24 section, and amendments thereto, including all such fees that the seller is
25 deemed to collect where the amount of the charge has not been separately
26 stated in an invoice, receipt or other similar document provided to the
27 consumer by the seller.

28 (e) The amount of the prepaid wireless 911 fee that is collected by a
29 seller from a consumer, if such amount is separately stated on an invoice,
30 receipt or other similar document provided to the consumer by the seller,
31 shall not be included in the base for measuring any tax, fee, surcharge or
32 other charge that is imposed by this state, any political subdivision of this
33 state or any intergovernmental agency.

34 (f) When prepaid wireless service is sold with one or more other
35 products or services for a single, nonitemized price, then the percentage
36 specified in subsection (a) shall apply to the entire nonitemized price

1 unless the seller elects to apply such percentage to: (1) A dollar amount, if
2 the amount of the prepaid wireless service is disclosed to the consumer as
3 a dollar amount, or (2) an identifiable portion of the price that is
4 attributable to the prepaid wireless service by reasonable and verifiable
5 standards from the seller's books and records that are kept in the regular
6 course of business for other purposes, including, but not limited to,
7 nontax purposes.

8 New Sec. 2. (a) Prepaid wireless 911 fees collected by sellers shall
9 be remitted to the department by electronic filing that is consistent with
10 the provisions of article 36 of chapter 79 of the Kansas Statutes
11 Annotated. The department shall establish registration and payment
12 procedures for the collection of the prepaid wireless 911 fee.

13 (b) Sellers that sell less than \$50 per month of prepaid wireless
14 service may submit fees on a biannual basis to the department.

15 (c) To minimize additional costs to the department, the department
16 may conduct audits of sellers in conjunction with sales and use tax audits.
17 The department is authorized to provide the secretary with information
18 obtained in such audits if such information indicates that a seller may not
19 be complying with the provisions of this section and section 1, and
20 amendments thereto. The secretary may request the department to initiate
21 collection or audit procedures on individual sellers if collection efforts by
22 the secretary are unsuccessful.

23 (d) The department shall establish procedures by which a seller may
24 document that a sale is not a retail sale, which procedures shall
25 substantially coincide with procedures for documenting sale for resale
26 transactions for article 36 of chapter 79 of the Kansas Statutes Annotated.

27 (e) The department shall transfer all remitted prepaid wireless 911
28 fees to the secretary within 30 days of receipt for remittance to the state
29 treasurer, pursuant to K.S.A. 12-5324, and amendments thereto. Prior to
30 such transfer, the department may retain up to 1% of remitted charges for
31 use in administering the provisions of this section.

32 (f) In addition to retaining 1% of remitted charges for administrative
33 uses, the department may retain up to \$70,000 of remitted funds in fiscal
34 year 2012 only for use in paying for programming and other one-time
35 costs for establishing a system for collecting the prepaid wireless 911 fee.

36 New Sec. 3. The prepaid wireless 911 fee imposed in this act shall
37 be the only 911 funding obligation imposed with respect to prepaid
38 wireless service in this state. No tax, fee, surcharge or other charge shall
39 be imposed by this state, any political subdivision of this state or any
40 intergovernmental agency for 911 funding purposes upon any prepaid
41 wireless service provider, seller or consumer with respect to the sale,
42 purchase, use or provision of prepaid wireless service.

43 Sec. 4. K.S.A. 2010 Supp. 12-5322 is hereby amended to read as

1 follows: 12-5322. As used in the wireless enhanced 911 act, unless the
2 context otherwise requires:

3 (a) "Advisory board" means the wireless enhanced 911 advisory
4 board established under K.S.A. 2010 Supp. 12-5326, and amendments
5 thereto.

6 (b) "Automatic number identification" means a feature by which a
7 person calling a public safety answering point has such person's 10-digit
8 telephone number simultaneously forwarded to the public safety
9 answering point and to the public safety answering point's display and
10 transfer.

11 (c) "Eligible municipality" means: (1) Any county having a
12 population of less than 75,000 or any city located within such a county;
13 or (2) any two or more such counties or cities.

14 (d) "Emergency telephone service" means a telephone system
15 utilizing a single three digit number "911" for reporting police, fire,
16 medical or other emergency situations.

17 (e) "Enhanced 911 service" means an emergency telephone service
18 that generally may provide, but is not limited to, selective routing,
19 automatic number identification and automatic location identification
20 features.

21 (f) "Exchange access facilities" means all facilities provided by the
22 service supplier for the facility which provides local telephone exchange
23 access to a service user.

24 (g) "Fund" means the wireless enhanced 911 grant fund established
25 by this act.

26 (h) "Governing body" means the board of county commissioners of
27 a county or the governing body of a city.

28 (i) "Local collection point administrator" means the statewide
29 association of cities as established by K.S.A. 12-1610e, and amendments
30 thereto, and the statewide association of counties as established by K.S.A.
31 19-2690, and amendments thereto.

32 (j) "Mobile telephone number" means the telephone number
33 assigned to a wireless telephone at the time of initial activation.

34 (k) "Person" means any individual, firm, partnership, copartnership,
35 joint venture, association, cooperative organization, corporation,
36 municipal or private, and whether organized for profit or not, state,
37 county, political subdivision, state department, commission, board,
38 bureau or fraternal organization, nonprofit organization, estate, trust,
39 business or common law trust, receiver, assignee for the benefit of
40 creditors, trustee or trustee in bankruptcy or any other legal entity.

41 (l) "Prepaid wireless telephone service" means wireless telephone
42 service that is activated in advance by payment for a finite dollar amount
43 of service or for a finite set of minutes that terminate either upon use by a

1 customer and delivery by the wireless provider of an agreed-upon amount
2 of service corresponding to the total dollar amount paid in advance or
3 within a certain period of time following the initial purchase or activation,
4 unless additional payments are made.

5 (m) "Primary place of use" has the meaning provided in the mobile
6 telecommunications act, (4 U.S.C. § 116, et seq., as in effect on the
7 effective date of this act).

8 (n) "Project" means the development and acquisition of the
9 necessary improvements in order to facilitate the establishment of
10 wireless enhanced 911 service.

11 (o) "Project costs" means all costs or expenses which are necessary
12 or incident to a project and which are directly attributable thereto.

13 (p) "PSAP" means public safety answering point.

14 (q) "Pseudo-automatic number identification" means a feature by
15 which automatic number identification is provided to a public safety
16 answering point of the 10-digit telephone number of the specific cell site
17 or cell site sector from which a wireless call originated.

18 (r) "Public agency" means any city, county, municipal corporation,
19 public district or public authority located in whole or in part within this
20 state which provides or has authority to provide fire fighting, law
21 enforcement, ambulance, emergency medical or other emergency
22 services.

23 (s) "Secretary" means the secretary of administration.

24 (t) "Service supplier" means any person providing exchange
25 telephone service to any service user in this state.

26 (u) "Service user" means any person who is provided exchange
27 telephone service or wireless service in this state.

28 (v) "Subscriber account" means the 10-digit access number assigned
29 to a wireless service customer regardless of whether more than one such
30 number is aggregated for the purpose of billing a service user.

31 (w) "Subscriber radio equipment" means mobile and portable radio
32 equipment installed in vehicles or carried by persons for voice
33 communication with a radio system.

34 (x) "Tariff rate" means the rate or rates billed by a service supplier
35 and as stated in the service supplier's tariffs, approved by the state
36 corporation commission which represent the service supplier's recurring
37 charges for exchange access facilities or their equivalent, exclusive of all
38 taxes, fees, licenses or similar charges whatsoever.

39 (y) "Valid request" means a request to a wireless carrier for wireless
40 enhanced 911 service, made by a PSAP which is capable of receiving and
41 utilizing the data elements associated with wireless enhanced 911 service
42 as determined in accordance with 47 CFR 20.18 (October 1, 2002).

43 (z) ~~"Wholesaler of prepaid wireless service" means a person who~~

1 ~~purchases at wholesale wireless service from a wireless carrier for resale~~
 2 ~~as prepaid wireless service.~~

3 (aa) (z) "Wireless automatic location identification information"
 4 means a feature by which information is provided to a public safety
 5 answering point identifying the location of a 911 caller within the
 6 parameters established by the federal communications commission.

7 (bb) (aa) "Wireless carrier" means any common, private or other
 8 radio carrier licensed by the federal communications commission to
 9 provide two-way voice service in this state which provides
 10 interconnection to the public switched telephone network and access to a
 11 24-hour answering point.

12 (ee) (bb) "Wireless enhanced 911 grant fee" means the fee imposed
 13 under K.S.A. 2010 Supp. 12-5324, and amendments thereto.

14 (dd) (cc) "Wireless enhanced 911 local fee" means the fee imposed
 15 under K.S.A. 2010 Supp. 12-5330, and amendments thereto.

16 (ee) (dd) "Wireless enhanced 911 service" means a communication
 17 service by which wireless carriers can provide automatic number
 18 identification, pseudo-automatic number identification and wireless
 19 automatic location identification information to a requesting PSAP, as
 20 defined in FCC docket 94-102, which is capable of receiving and
 21 utilizing the data elements associated with wireless enhanced 911 service.

22 (ff) (ee) "Wireless service" means a two-way voice service provided
 23 by a wireless carrier.

24 (ff) *"Consumer" means a person who purchases prepaid wireless*
 25 *service in a retail transaction.*

26 (gg) *"Department" means the Kansas department of revenue.*

27 (hh) *"Retail transaction" means the purchase of prepaid wireless*
 28 *service from a seller*
 29 *for any purposes other than resale, not including the use, storage or*
 30 *consumption of such services.*

31 (ii) *"Seller" means a person who sells prepaid wireless service to*
 32 *another person.*

33 Section 5. K.S.A. 2010 Supp. 12-5324 is hereby amended to read as
 34 follows: 12-5324. (a) Subject to the provisions of K.S.A. 2010 Supp. 12-
 35 5338, and amendments thereto, effective July 1, 2004, there is hereby
 36 established a wireless enhanced 911 grant fee in the amount of \$.25 per
 37 month per wireless subscriber account with primary place of use in the
 38 state of Kansas. It shall be the duty of each wireless carrier to collect such
 39 fee from the wireless service user and remit such fee to the secretary as
 40 provided by K.S.A. 2010 Supp. 12-5331, and amendments thereto.

41 ~~(b) Subject to the provisions of K.S.A. 2010 Supp. 12-5338, and~~
 42 ~~amendments thereto, there is hereby established a wireless enhanced 911~~
 43 ~~grant fee in an amount equal to 1% of the retail price of any prepaid~~

1 ~~wireless service sold in the state. It shall be the duty of each wholesaler of~~
2 ~~prepaid wireless service to remit such fee to the secretary as provided by~~
3 ~~K.S.A. 2010 Supp. 12-5331, and amendments thereto.~~

4 (e) The secretary shall remit to the state treasurer, in accordance
5 with the provisions of K.S.A. 75-4215, and amendments thereto, any fees
6 received pursuant to this section. Upon receipt of the remittance, the state
7 treasurer shall deposit the entire amount in the state treasury and credit it
8 to the wireless enhanced 911 grant fund.

9 Sec. 6. K.S.A. 2010 Supp. 12-5331 is hereby amended to read as
10 follows: 12-5331. (a) Every billed wireless service user shall be liable for
11 the wireless enhanced 911 grant fee and the wireless enhanced 911 local
12 fee until such fees have been paid to the wireless carrier.

13 (b) The duty to collect any such fees imposed pursuant to this act
14 shall commence July 1, 2004. Such fees shall be added to and may be
15 stated separately in billings for the subscriber account. If stated separately
16 in billings, the fees shall be labeled "KS E-911 fees."

17 (c) The wireless carrier shall have no obligation to take any legal
18 action to enforce the collection of the fees imposed by this act. The
19 wireless carrier shall provide annually to the secretary a list of amounts of
20 uncollected wireless enhanced 911 grant fees along with the names and
21 addresses of those wireless service users which carry a balance that can
22 be determined by the wireless carrier to be nonpayment of such fees. The
23 wireless carrier shall provide annually to the local collection point
24 administrator a list of amounts of uncollected wireless enhanced 911 local
25 fees along with the names and addresses of those wireless service users
26 which carry a balance that can be determined by the wireless carrier to be
27 nonpayment of such fees.

28 (d) The fees imposed by this act shall be collected insofar as
29 practicable at the same time as, and along with, the charges for wireless
30 service in accordance with regular billing practice of the wireless carrier.

31 (e) The wireless enhanced 911 grant fee and the amounts required to
32 be collected therefor are due monthly. The amount of any such fees
33 collected in one month by the wireless carrier shall be remitted to the
34 secretary not more than 15 days after the close of the calendar month. On
35 or before the 15th day of each calendar month following, a return for the
36 preceding month shall be filed with the secretary in such form as the
37 secretary and the wireless carrier shall agree. The wireless carrier
38 required to file the return shall deliver the return together with a
39 remittance of the amount of the fees payable to the secretary. The wireless
40 carrier shall maintain records of the amount of any such fees collected
41 pursuant to action in accord with this act. Such records shall be
42 maintained for a period of three years from the time the fees are collected.

43 (f) The wireless enhanced 911 local fee and the amounts required to

1 be collected therefor are due monthly. The amount of any such fees
2 collected in one month by the wireless carrier shall be remitted to the
3 local collection point administrator not more than 15 days after the close
4 of the calendar month. On or before the 15th day of each calendar month
5 following, a return for the preceding month shall be filed with the local
6 collection point administrator. Such return shall be in such form and shall
7 contain such information as required by the administrator. The wireless
8 carrier required to file the return shall deliver the return together with a
9 remittance of the amount of the fees payable to the local collection point
10 administrator. The wireless carrier shall maintain records of the amount
11 of any such fees collected pursuant to action in accord with this act. Such
12 records shall be maintained for a period of three years from the time the
13 fees are collected.

14 ~~(g) In the case of prepaid wireless telephone service, the monthly~~
15 ~~wireless enhanced 911 grant fee shall be remitted to the secretary by the~~
16 ~~wholesaler of the prepaid wireless service not more than 15 days after the~~
17 ~~close of the calendar month in which the prepaid wireless service is sold~~
18 ~~by such wholesaler.~~

19 ~~(h)~~ Except as provided by subsection (d) of K.S.A. 2010 Supp. 12-
20 5330, and amendments thereto, not later than 30 days after receipt of
21 moneys from wireless carriers pursuant to this section, the local
22 collection point administrator shall distribute such moneys collected from
23 the wireless enhanced 911 local fee to PSAP's based upon primary place
24 of use information provided by wireless carriers. The local collection
25 point administrator may retain an administrative fee of not more than 2%
26 of moneys collected from such fee. Moneys which cannot be attributed to
27 a specific PSAP shall be utilized for the purposes set out in subsection (b)
28 of K.S.A. 2010 Supp. 12-5330, and amendments thereto. Until all PSAP's
29 have achieved phase II status, such moneys shall only be distributed for
30 such purposes to PSAP's that have not achieved phase II status. When all
31 PSAP's have achieved phase II status, then such moneys shall be
32 distributed for such purposes to any PSAP.

33 ~~(+)~~ ~~(h)~~ The local collection point administrator shall keep accurate
34 accounts of all receipts and disbursements of moneys from the wireless
35 enhanced 911 local fee. The receipts and disbursements shall be audited
36 yearly by a licensed municipal accountant or certified public accountant
37 and the audit report shall be submitted to the secretary.

38 Sec. 7. K.S.A. 2010 Supp. 75-5133 is hereby amended to read as
39 follows: 75-5133. (a) Except as otherwise more specifically provided by
40 law, all information received by the secretary of revenue, the director of
41 taxation or the director of alcoholic beverage control from returns,
42 reports, license applications or registration documents made or filed
43 under the provisions of any law imposing any sales, use or other excise

1 tax administered by the secretary of revenue, the director of taxation, or
2 the director of alcoholic beverage control, or from any investigation
3 conducted under such provisions, shall be confidential, and it shall be
4 unlawful for any officer or employee of the department of revenue to
5 divulge any such information except in accordance with other provisions
6 of law respecting the enforcement and collection of such tax, in
7 accordance with proper judicial order or as provided in K.S.A. 74-2424,
8 and amendments thereto.

9 (b) The secretary of revenue or the secretary's designee may:

10 (1) Publish statistics, so classified as to prevent identification of
11 particular reports or returns and the items thereof;

12 (2) allow the inspection of returns by the attorney general or the
13 attorney general's designee;

14 (3) provide the post auditor access to all such excise tax reports or
15 returns in accordance with and subject to the provisions of subsection (g)
16 of K.S.A. 46-1106, and amendments thereto;

17 (4) disclose taxpayer information from excise tax returns to persons
18 or entities contracting with the secretary of revenue where the secretary
19 has determined disclosure of such information is essential for completion
20 of the contract and has taken appropriate steps to preserve confidentiality;

21 (5) provide information from returns and reports filed under article
22 42 of chapter 79 of the Kansas Statutes Annotated to county appraisers as
23 is necessary to insure proper valuations of property. Information from
24 such returns and reports may also be exchanged with any other state
25 agency administering and collecting conservation or other taxes and fees
26 imposed on or measured by mineral production;

27 (6) provide, upon request by a city or county clerk or treasurer or
28 finance officer of any city or county receiving distributions from a local
29 excise tax, monthly reports identifying each retailer doing business in
30 such city or county or making taxable sales sourced to such city or
31 county, setting forth the tax liability and the amount of such tax remitted
32 by each retailer during the preceding month, and identifying each
33 business location maintained by the retailer and such retailer's sales or use
34 tax registration or account number;

35 (7) provide information from returns and applications for
36 registration filed pursuant to K.S.A. 12-187, and amendments thereto,
37 and K.S.A. 79-3601, and amendments thereto, to a city or county
38 treasurer or clerk or finance officer to explain the basis of statistics
39 contained in reports provided by subsection (b)(6);

40 (8) disclose the following oil and gas production statistics received
41 by the department of revenue in accordance with K.S.A. 79-4216 et seq.,
42 and amendments thereto: Volumes of production by well name, well
43 number, operator's name and identification number assigned by the state

1 corporation commission, lease name, leasehold property description,
2 county of production or zone of production, name of purchaser and
3 purchaser's tax identification number assigned by the department of
4 revenue, name of transporter, field code number or lease code, tax period,
5 exempt production volumes by well name or lease, or any combination of
6 this information;

7 (9) release or publish liquor brand registration information provided
8 by suppliers, farm wineries and microbreweries in accordance with the
9 liquor control act. The information to be released is limited to: Item
10 number, universal numeric code, type status, product description, alcohol
11 percentage, selling units, unit size, unit of measurement, supplier number,
12 supplier name, distributor number and distributor name;

13 (10) release or publish liquor license information provided by liquor
14 licensees, distributors, suppliers, farm wineries and microbreweries in
15 accordance with the liquor control act. The information to be released is
16 limited to: County name, owner, business name, address, license type,
17 license number, license expiration date and the process agent contact
18 information;

19 (11) release or publish cigarette and tobacco license information
20 obtained from cigarette and tobacco licensees in accordance with the
21 Kansas cigarette and tobacco products act. The information to be released
22 is limited to: County name, owner, business name, address, license type
23 and license number;

24 (12) provide environmental surcharge or solvent fee, or both,
25 information from returns and applications for registration filed pursuant
26 to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the
27 secretary of health and environment or the secretary's designee for the
28 sole purpose of ensuring that retailers collect the environmental surcharge
29 tax or solvent fee, or both;

30 (13) provide water protection fee information from returns and
31 applications for registration filed pursuant to K.S.A. 82a-954, and
32 amendments thereto, to the secretary of the state board of agriculture or
33 the secretary's designee and the secretary of the Kansas water office or
34 the secretary's designee for the sole purpose of verifying revenues
35 deposited to the state water plan fund;

36 (14) provide to the secretary of commerce copies of applications for
37 project exemption certificates sought by any taxpayer under the enterprise
38 zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606,
39 and amendments thereto;

40 (15) disclose information received pursuant to the Kansas cigarette
41 and tobacco act and subject to the confidentiality provisions of this act to
42 any criminal justice agency, as defined in subsection (c) of K.S.A. 22-
43 4701, and amendments thereto, or to any law enforcement officer, as

1 defined in subsection (c)(10) of K.S.A. 21-3110, and amendments
2 thereto, on behalf of a criminal justice agency, when requested in writing
3 in conjunction with a pending investigation; and

4 (16) provide to retailers tax exemption information for the sole
5 purpose of verifying the authenticity of tax exemption numbers issued by
6 the department.; *and*

7 (17) *provide information concerning remittance by sellers of*
8 *prepaid wireless 911 fees from returns to the 911 state fund administrator,*
9 *as defined in section 2, and amendments thereto, for purposes of*
10 *verifying seller compliance with collection and remittance of such fees.*

11 (c) Any person receiving any information under the provisions of
12 subsection (b) shall be subject to the confidentiality provisions of
13 subsection (a) and to the penalty provisions of subsection (d).

14 (d) Any violation of this section shall be a class A, nonperson
15 misdemeanor, and if the offender is an officer or employee of this state,
16 such officer or employee shall be dismissed from office. Reports of
17 violations of this paragraph shall be investigated by the attorney general.
18 The district attorney or county attorney and the attorney general shall
19 have authority to prosecute any violation of this section if the offender is
20 a city or county clerk or treasurer or finance officer of a city or county.

21 Sec. 8. K.S.A. 2010 Supp. 12-5322, 12-5324, 12-5331 and 75-5133
22 are hereby repealed.

23 Sec. 9. This act shall take effect and be in force from and after
24 January 1, 2012, and its publication in the statute book.

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