

1 SENATE BILL 372

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; CHANGING THE TELECOMMUNICATIONS
12 RELAY SERVICE SURCHARGE FROM THIRTY-THREE HUNDREDTHS PERCENT ON
13 THE GROSS AMOUNT PAID ON CERTAIN TELECOMMUNICATIONS BILLS TO
14 FIFTY-ONE CENTS (\$.51); AMENDING THE TELECOMMUNICATIONS ACCESS
15 ACT.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 63-9F-11 NMSA 1978 (being Laws 1993,
19 Chapter 54, Section 11, as amended) is amended to read:

20 "63-9F-11. IMPOSITION OF SURCHARGE.--

21 A. A telecommunications relay service surcharge of
22 [~~thirty-three hundredths percent is imposed on the gross~~]
23 fifty-one cents (\$.51) is imposed on the amount paid:

24 (1) by customers, except customers whose
25 telephone service rates are reduced as authorized by the Low

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1 Income Telephone Service Assistance Act, for intrastate
2 telecommunications services provided in this state;

3 (2) by customers for the intrastate portion of
4 interconnected voice over internet protocol service;

5 (3) by customers for intrastate mobile
6 telecommunications services that originate and terminate in the
7 same state, regardless of where the mobile telecommunications
8 services originate, terminate or pass through, provided by home
9 service providers to customers whose place of primary use is in
10 New Mexico; and

11 (4) by a prepaid consumer in a retail
12 transaction.

13 B. The telecommunications relay service surcharge
14 shall be included on the monthly bill of each customer of a
15 local exchange company or other telecommunications company
16 providing intrastate telecommunications services,
17 interconnected voice over internet protocol services or
18 intrastate mobile telecommunications services and paid at the
19 time of payment of the monthly bill. Receipts from selling
20 those services to any other telecommunications company or
21 provider for resale are not subject to the surcharge. The
22 customer is liable for the payment of the surcharge to the
23 provider of intrastate mobile telecommunications services, the
24 provider of interconnected voice over internet protocol
25 services or the local exchange company or other

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1 telecommunications company providing intrastate
2 telecommunications services to the customer.

3 C. For the purposes of the surcharge imposed on a
4 retail transaction pursuant to Paragraph (4) of Subsection A of
5 this section:

6 (1) the surcharge shall be collected by the
7 seller from the prepaid consumer with respect to each retail
8 transaction occurring in this state. The amount of the
9 surcharge shall be either separately stated on an invoice,
10 receipt or other similar document that is provided to the
11 prepaid consumer by the seller or otherwise disclosed to the
12 prepaid consumer;

13 (2) for the purposes of Paragraph (1) of this
14 subsection, a retail transaction that is effected in person by
15 a prepaid consumer at a business location of the seller shall
16 be treated as occurring in this state if that business location
17 is in this state, and any other retail transaction is treated
18 as occurring in this state if the retail transaction is treated
19 as occurring in this state for purposes of the Gross Receipts
20 and Compensating Tax Act;

21 (3) the surcharge is the liability of the
22 prepaid consumer and not of the seller or any provider, except
23 that the seller shall be liable to remit all surcharges
24 collected from the prepaid consumer as provided in this
25 subsection, including all such surcharges that the seller is

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1 deemed to collect where the amount of the surcharge has not
2 been separately stated on an invoice, receipt or other similar
3 document provided to the prepaid consumer by the seller;

4 (4) the amount of the surcharge that is
5 collected by a seller from a prepaid consumer, if such amount
6 is separately stated on an invoice, receipt or other similar
7 document provided to the prepaid consumer by the seller, shall
8 not be included in the base for measuring any tax, fee,
9 surcharge or other charge that is imposed by this state, any
10 political subdivision of this state or any intergovernmental
11 agency;

12 (5) when prepaid wireless communications
13 service is sold with one or more other products or services for
14 a single, non-itemized price, the ~~[percentage]~~ amount specified
15 in Subsection A of this section shall apply to the entire non-
16 itemized price ~~[unless the seller elects to apply such~~
17 ~~percentage to:~~

18 ~~(a) if the amount of the prepaid~~
19 ~~wireless communications service is disclosed to the prepaid~~
20 ~~consumer as a dollar amount, such dollar amount; or~~

21 ~~(b) if the seller can identify the~~
22 ~~portion of the price that is attributable to the prepaid~~
23 ~~wireless communications service by reasonable and verifiable~~
24 ~~standards from its books and records that are kept in the~~
25 ~~regular course of business for other purposes, including~~

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1 ~~non-tax purposes, such portion];~~

2 (6) if a minimal amount of prepaid wireless
3 communications service is sold with a prepaid wireless device
4 for a single, non-itemized price, the seller may elect not to
5 apply the ~~[percentage]~~ amount specified in Subsection A of this
6 section to such transaction. For the purposes of this
7 paragraph, an amount of service denominated as ten minutes or
8 less, or five dollars (\$5.00) or less, is minimal;

9 (7) surcharges collected by sellers shall be
10 remitted to the taxation and revenue department at the times
11 and in the manner provided with respect to the Gross Receipts
12 and Compensating Tax Act. The department shall establish
13 registration and payment procedures that substantially coincide
14 with the registration and payment procedures that apply to the
15 Gross Receipts and Compensating Tax Act. A seller shall be
16 permitted to deduct and retain three percent of surcharges that
17 are collected by the seller from the prepaid consumer;

18 (8) the audit and appeal procedures applicable
19 to the Gross Receipts and Compensating Tax Act shall apply to
20 the surcharge;

21 (9) the taxation and revenue department shall
22 establish procedures by which a seller of prepaid wireless
23 communications services may document that a sale is not a
24 retail transaction, which procedures shall substantially
25 coincide with the procedures for documenting sale for resale

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1 transactions for the Gross Receipts and Compensating Tax Act;
2 and

3 (10) notwithstanding Paragraph (1) of this
4 subsection, if a 911 surcharge is imposed on prepaid wireless
5 communications service pursuant to the Enhanced 911 Act, the
6 taxation and revenue department shall promulgate rules to
7 permit sellers to combine the surcharge imposed pursuant to
8 this section and the surcharge imposed pursuant to the Enhanced
9 911 Act into a single surcharge on the invoice, receipt or
10 other similar document that is provided to the prepaid
11 consumer. The department shall ensure that appropriate
12 surcharge revenues are directed proportionately to the
13 respective 911 and telecommunications relay service funds.

14 D. A telecommunications company providing
15 intrastate telecommunications services, a home service provider
16 providing intrastate mobile telecommunications services and a
17 seller of interconnected voice over internet protocol services
18 shall, on sales subject to the telecommunications relay service
19 surcharge, assess and collect the surcharge and remit the
20 surcharge collected monthly to the taxation and revenue
21 department on or before the twenty-fifth day of the month
22 following collection. The department shall administer and
23 enforce the collection of the surcharge in accordance with the
24 Tax Administration Act.

25 E. The taxation and revenue department shall

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1 transfer to the telecommunications access fund the amount of
2 the telecommunications relay service surcharge collected less
3 any amount deducted in accordance with Subsection F of this
4 section. Transfer of the net receipts from the surcharge to
5 the telecommunications access fund shall be made within the
6 month following the month in which the surcharge is collected.

7 F. The taxation and revenue department may deduct
8 an amount not to exceed three percent of the telecommunications
9 relay service surcharge collected as a charge for the
10 administrative costs of collection and shall remit that amount
11 to the state treasurer for deposit in the general fund each
12 month.

13 G. The commission shall report to the revenue
14 stabilization and tax policy committee annually by September 30
15 the following information with respect to the prior fiscal
16 year:

17 (1) the amount and source of revenue received
18 by the telecommunications access fund;

19 (2) the amount and category of expenditures
20 from the fund; and

21 (3) the balance of the fund on that June 30."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2025.