

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 411

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

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10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; EXPANDING THE APPLICATION OF
12 THE TELECOMMUNICATIONS RELAY SERVICE SURCHARGE TO INCLUDE
13 MODERN TELECOMMUNICATIONS TECHNOLOGIES; EXEMPTING CERTAIN
14 TELECOMMUNICATIONS SERVICES CUSTOMERS FROM THE SURCHARGE;
15 CLARIFYING PROVISIONS OF THE TELECOMMUNICATIONS ACCESS ACT.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 63-9F-3 NMSA 1978 (being Laws 1993,
19 Chapter 54, Section 3, as amended) is amended to read:

20 "63-9F-3. DEFINITIONS.--As used in the Telecommunications
21 Access Act:

22 A. "commission" means the commission for deaf and
23 hard-of-hearing persons;

24 B. "communications assistant" means an individual
25 who translates conversation from text to voice and from voice

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1 to text between two end users of a telecommunications service;

2 C. "home service provider" means a facilities-based
3 carrier or reseller with which a customer contracts for the
4 provision of wireless communications services;

5 ~~[G.]~~ D. "impaired" means having an impairment of or
6 deficit in the ability to hear or speak, or both;

7 E. "interconnected voice over internet protocol
8 service" means a service that:

9 (1) enables real-time, two-way voice
10 communications;

11 (2) requires a broadband connection from the
12 user's location;

13 (3) requires internet protocol-compatible
14 customer premises equipment; and

15 (4) permits users generally to receive calls
16 that originate on the public-switched telephone network and to
17 terminate calls to the public-switched telephone network;

18 ~~[D.]~~ F. "intrastate [~~telephone services means all~~
19 ~~charges for] telecommunications service":~~

20 (1) means the provision of access lines,
21 special services and intrastate toll services, including ~~[all]~~
22 for telephone calls originating and terminating in the state;
23 and

24 (2) does not include interconnected voice over
25 internet protocol service or wireless communications service;

1 G. "place of primary use" means the street address
2 representative of where a customer's use of a wireless
3 communications service primarily occurs and that is:

4 (1) the residential street address or the
5 primary business street address of the customer; and

6 (2) within the licensed service area of the
7 home service provider;

8 H. "prepaid consumer" means a person who purchases
9 prepaid wireless communications service in a retail
10 transaction;

11 I. "prepaid wireless communications service" means
12 a wireless communications service that must be paid for in
13 advance and is sold in predetermined units or dollars of which
14 the number declines with use in a known amount;

15 J. "retail transaction" means the purchase of
16 prepaid wireless communications service from a seller for any
17 purpose other than for resale;

18 K. "seller" means a person who sells prepaid
19 wireless communications service to another person;

20 ~~[E.]~~ L. "specialized telecommunications equipment"
21 means devices that enable or assist an impaired individual to
22 communicate with another individual using the telephone
23 network;

24 ~~[F.]~~ M. "telecommunications company" means an
25 individual, corporation, partnership, joint venture, company,

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1 firm, association, proprietorship or other entity that provides
2 public telecommunications services, and includes cellular
3 service companies as defined in Subsection B of Section 63-9B-3
4 NMSA 1978; [~~and~~

5 ~~G.]~~ N. "telecommunications relay system" means a
6 statewide telecommunications system through which an impaired
7 individual using specialized telecommunications equipment is
8 able to send or receive messages to and from an individual who
9 is not impaired and whose telephone is not equipped with
10 specialized telecommunications equipment and through which the
11 unimpaired individual is able, by using voice communications,
12 to send and receive messages to and from an impaired person;
13 and

14 O. "wireless communications service" means a
15 commercial mobile radio service as defined by Section 20.3 of
16 Title 47 of the Code of Federal Regulations, as amended, but
17 excludes internet access service."

18 SECTION 2. 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 amount
23 paid:

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

1 Income Telephone Service Assistance Act, for [~~(1)~~] intrastate
 2 [~~telephone~~] telecommunications services [~~other than mobile~~
 3 ~~telecommunications services~~] provided in this state; ~~and~~

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

6 [~~(2)~~] (3) by customers for intrastate mobile
 7 telecommunications services that originate and terminate in the
 8 same state, regardless of where the mobile telecommunications
 9 services originate, terminate or pass through, provided by home
 10 service providers to customers whose place of primary use is in
 11 New Mexico; and

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

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

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1 voice over internet protocol services or the local exchange
2 company or other telecommunications company providing
3 intrastate [~~telephone~~] telecommunications services to the
4 customer. [~~For the purposes of Subsections A and B of this~~
5 section, "~~home service provider~~", "~~mobile telecommunications~~
6 services" and "~~place of primary use~~" have the meanings given in
7 the federal Mobile Telecommunications Sourcing Act.]

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

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

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

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1 (3) the surcharge is the liability of the
2 prepaid consumer and not of the seller or any provider, except
3 that the seller shall be liable to remit all surcharges
4 collected from the prepaid consumer as provided in this
5 subsection, including all such surcharges that the seller is
6 deemed to collect where the amount of the surcharge has not
7 been separately stated on an invoice, receipt or other similar
8 document provided to the prepaid consumer by the seller;

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

17 (5) when prepaid wireless communications
18 service is sold with one or more other products or services for
19 a single, non-itemized price, the percentage specified in
20 Subsection A of this section shall apply to the entire
21 non-itemized price unless the seller elects to apply such
22 percentage to:

23 (a) if the amount of the prepaid
24 wireless communications service is disclosed to the prepaid
25 consumer as a dollar amount, such dollar amount; or

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1 (b) if the seller can identify the
2 portion of the price that is attributable to the prepaid
3 wireless communications service by reasonable and verifiable
4 standards from its books and records that are kept in the
5 regular course of business for other purposes, including
6 non-tax purposes, such portion;

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

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

23 (8) the audit and appeal procedures applicable
24 to the Gross Receipts and Compensating Tax Act shall apply to
25 the surcharge;

1 (9) the taxation and revenue department shall
 2 establish procedures by which a seller of prepaid wireless
 3 communications services may document that a sale is not a
 4 retail transaction, which procedures shall substantially
 5 coincide with the procedures for documenting sale for resale
 6 transactions for the Gross Receipts and Compensating Tax Act;
 7 and

8 (10) notwithstanding Paragraph (1) of this
 9 subsection, if a 911 surcharge is imposed on prepaid wireless
 10 communications service pursuant to the Enhanced 911 Act, the
 11 taxation and revenue department shall promulgate rules to
 12 permit sellers to combine the surcharge imposed pursuant to
 13 this section and the surcharge imposed pursuant the Enhanced
 14 911 Act into a single surcharge on the invoice, receipt or
 15 other similar document that is provided to the prepaid
 16 consumer. The department shall ensure that appropriate
 17 surcharge revenues are directed proportionately to the
 18 respective 911 and telecommunications relay service funds.

19 ~~[G.]~~ D. A telecommunications company providing
 20 intrastate ~~[telephone]~~ telecommunications services, a home
 21 service provider providing intrastate mobile telecommunications
 22 services and a seller of interconnected voice over internet
 23 protocol services shall, ~~[be responsible for assessing,~~
 24 collecting and remitting] on sales subject to the
 25 telecommunications relay service surcharge, ~~[to the taxation~~

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1 ~~and revenue department. The amount of the telecommunications~~
2 ~~relay service] assess and collect the surcharge and remit the~~
3 ~~surcharge collected [by a telecommunications company shall be~~
4 ~~remitted] monthly to the taxation and revenue department on or~~
5 ~~before the twenty-fifth day of the month following collection~~
6 ~~[which]. The department shall administer and enforce the~~
7 ~~collection of the surcharge [pursuant to the provisions of] in~~
8 ~~accordance with the Tax Administration Act.~~

9 ~~[D.]~~ E. The taxation and revenue department shall
10 ~~[remit] transfer~~ to the telecommunications access fund the
11 amount of the telecommunications relay service surcharge
12 collected less any amount deducted ~~[pursuant to the provisions~~
13 ~~of] in accordance with~~ Subsection ~~[E]~~ F of this section.
14 Transfer of the net receipts from the surcharge to the
15 telecommunications access fund shall be made within the month
16 following the month in which the surcharge is collected.

17 ~~[E.]~~ F. The taxation and revenue department may
18 deduct an amount not to exceed three percent of the
19 telecommunications relay service surcharge collected as a
20 charge for the administrative costs of collection ~~[which] and~~
21 ~~shall remit that~~ amount ~~[shall be remitted]~~ to the state
22 treasurer for deposit in the general fund each month.

23 ~~[F.]~~ G. The commission shall report to the revenue
24 stabilization and tax policy committee annually by September 30
25 the following information with respect to the prior fiscal

1 year:

2 (1) the amount and source of revenue received
3 by the telecommunications access fund;

4 (2) the amount and category of expenditures
5 from the fund; and

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

7 SECTION 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2017.

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