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HOUSE BILL NO. 2184

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact §§ 56-484.17:1 and 58.1-647 of the Code of Virginia, relating to prepaid telecommunications service.

Patron—Janis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-484.17:1 and 58.1-647 of the Code of Virginia are amended and reenacted as follows:

§ 56-484.17:1. Collection of prepaid wireless E-911 charge at point of sale; rate established.

A. As used in this section, unless the context requires a different meaning:

"Dealer" means a person who sells prepaid CMRS to an end user.

"Department" means the Department of Taxation.

"End user" means a person who purchases prepaid CMRS in a retail transaction.

"Prepaid CMRS" means CMRS that allows a caller to dial 911 to access the 911 system, which CMRS service is required to be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount. *Such predetermined units may be measured in units of time, not to exceed one month.*

"Prepaid wireless E-911 charge" means the charge that is required to be collected by a dealer from an end user in the amount established under subsection B.

"Retail transaction" means the purchase of prepaid CMRS from a dealer for any purpose other than resale. If more than one item or article of prepaid CMRS is purchased by an end user, then each item or article purchased shall be deemed to be a separate retail transaction.

B. The prepaid wireless E-911 charge:

1. Shall be \$0.50 per retail transaction.

2. Shall be collected by the dealer from the end user with respect to each retail transaction occurring in the Commonwealth. The amount of the prepaid wireless E-911 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the end user by the dealer or otherwise disclosed by the dealer to the end user. For purposes of this subdivision, a retail transaction that is effected in person by an end user at a business location of the dealer shall be treated as occurring in the Commonwealth if that business location is in the Commonwealth, and any other retail transaction shall be treated as occurring in the Commonwealth if treated as occurring in the Commonwealth for purposes of the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

3. Is the liability of the end user and not of the dealer or of any CMRS provider, except that the dealer shall be liable to remit to the Department all prepaid wireless E-911 charges that the dealer collects from end users as provided in subsection E, including all prepaid wireless E-911 charges that the dealer is deemed to have collected in cases in which the charge has not been separately stated on an invoice, receipt, or other similar document provided to the end user by the dealer.

C. The amount of the prepaid wireless E-911 charge that is collected by a dealer from an end user shall not be included in the base for measuring any fee, tax, surcharge, or other charge that is imposed by the Commonwealth, any political subdivision of the Commonwealth, or any intergovernmental agency.

D. Except as otherwise expressly provided herein, the charge imposed pursuant to this section shall be collected by the Tax Commissioner and shall be implemented, enforced, and collected in the same manner as retail sales and use taxes are implemented, enforced, and collected under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). However, as provided in subdivision B 3, the prepaid wireless E-911 charge shall be the liability of the end user and not of the dealer or of any CMRS provider, except that the dealer shall be liable to remit to the Department all prepaid wireless E-911 charges that the dealer collects from end users. A dealer shall be permitted to deduct and retain five percent of prepaid wireless E-911 charges that are collected by the dealer from end users if such charges were not delinquent at the time of remittance to the Department. Nothing herein shall be construed or interpreted as limiting or restricting the discount provided under § 58.1-622 with regard to prepaid CMRS that is taxable under the Virginia Retail Sales and Use Tax Act.

The Department, after subtracting its direct costs of administration, shall deposit all remitted prepaid wireless E-911 charges into the state treasury. The Comptroller shall as soon as practicable deposit such

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59 moneys into the Wireless E-911 Fund for use by the Board in accordance with the purposes permitted
60 by this article.

61 E. The Department shall develop and publish guidelines implementing the provisions of this section
62 and shall update the guidelines as deemed necessary by the Tax Commissioner. The Tax Commissioner
63 shall notify every dealer holding a certificate of registration under § 58.1-613 when the guidelines and
64 any updates are published. The development and publication of the guidelines shall be exempt from the
65 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

66 Among other items, the guidelines shall include provisions exempting small dealers, as defined solely
67 by the Department, from the otherwise mandatory requirement under this section to disclose the prepaid
68 wireless E-911 charge to the end user. The guidelines shall define a "small dealer" based, in part or in
69 whole, upon the extent to which the dealer sells prepaid CMRS.

70 F. The provisions of this section shall apply to retail transactions occurring on or after January 1,
71 2011.

72 § 58.1-647. Definitions.

73 Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title,
74 unless defined otherwise, as follows:

75 "Cable service" means the one-way transmission to subscribers of (i) video programming as defined
76 in 47 U.S.C. § 522(20) or (ii) other programming service, and subscriber interaction, if any, which is
77 required for the selection of such video programming or other programming service. Cable service does
78 not include any video programming provided by a commercial mobile service provider as defined in 47
79 U.S.C. § 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303(v).

80 "Call-by-call basis" means any method of charging for telecommunications services where the price
81 is measured by individual calls.

82 "Coin-operated communications service" means a communications service paid for by means of
83 inserting coins in a coin-operated telephone.

84 "Communications services" means the electronic transmission, conveyance, or routing of voice, data,
85 audio, video, or any other information or signals, including cable services, to a point or between or
86 among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium
87 or method now in existence or hereafter devised, regardless of the protocol used for the transmission or
88 conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or
89 termination of communications services; (ii) detailed billing of communications services; (iii) sale of
90 directory listings in connection with a communications service; (iv) central office and custom calling
91 features; (v) voice mail and other messaging services; and (vi) directory assistance.

92 "Communications services provider" means every person who provides communications services to
93 customers in the Commonwealth and is or should be registered with the Department as a provider.

94 "Cost price" means the actual cost of the purchased communications service computed in the same
95 manner as the sales price.

96 "Customer" means the person who contracts with the seller of communications services. If the person
97 who utilizes the communications services is not the contracting party, the person who utilizes the
98 services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does
99 not include a reseller of communications services or the mobile communications services of a serving
100 carrier under an agreement to serve the customer outside the communications service provider's licensed
101 service area.

102 "Customer channel termination point" means the location where the customer either inputs or
103 receives the private communications service.

104 "Information service" means the offering of a capability for generating, acquiring, storing,
105 transforming, processing, retrieving, using, or making available information via communications services
106 for purposes other than the electronic transmission, conveyance, or routing.

107 "Internet access service" means a service that enables users to access content, information, electronic
108 mail, or other services offered over the Internet, and may also include access to proprietary content,
109 information, and other services as part of a package of services offered to users. "Internet access
110 service" does not include telecommunications services, except to the extent telecommunications services
111 are purchased, used, or sold by a provider of Internet access to provide Internet access.

112 "Place of primary use" means the street address representative of where the customer's use of the
113 communications services primarily occurs, which must be the residential street address or the primary
114 business street address of the customer. In the case of mobile communications services, the place of
115 primary use shall be within the licensed service area of the home service provider.

116 "Postpaid calling service" means the communications service obtained by making a payment on a
117 call-by-call basis either through the use of a credit card or payment mechanism such as a bank card,
118 travel card, debit card, or by a charge made to a telephone number that is not associated with the
119 origination or termination of the communications service.

120 "Prepaid calling service" means the right to access exclusively communications services, which must

121 be paid for in advance and which enables the origination of calls using an access number or
122 authorization code, whether manually or electronically dialed, and that is sold in predetermined units or
123 dollars that decrease in number with use. *Such predetermined units may be measured in units of time,*
124 *not to exceed one month.*

125 "Private communications service" means a communications service that entitles the customer or user
126 to exclusive or priority use of a communications channel or group of channels between or among
127 channel termination points, regardless of the manner in which such channel or channels are connected,
128 and includes switching capacity, extension lines, stations, and any other associated services that are
129 provided in connection with the use of such channel or channels.

130 "Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than
131 for resale or for use as a component part of or for the integration into communications services to be
132 resold in the ordinary course of business.

133 "Sales price" means the total amount charged in money or other consideration by a communications
134 services provider for the sale of the right or privilege of using communications services in the
135 Commonwealth, including any property or other services that are part of the sale. The sales price of
136 communications services shall not be reduced by any separately identified components of the charge that
137 constitute expenses of the communications services provider, including but not limited to, sales taxes on
138 goods or services purchased by the communications services provider, property taxes, taxes measured by
139 net income, and universal-service fund fees.

140 "Service address" means, (i) the location of the telecommunications equipment to which a customer's
141 call is charged and from which the call originates or terminates, regardless of where the call is billed or
142 paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the
143 signal of the telecommunications system or in information received by the seller from its service
144 provider, where the system used to transport such signals is not that of the seller. If the location is not
145 known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of
146 primary use.