

CHAPTER 230
HB 391-FN – FINAL VERSION

12Mar2015... 0360h
05/14/2015 1594s
11June2015... 2298EBA

2015 SESSION

15-0568
05/09

HOUSE BILL ***391-FN***

AN ACT applying the E911 surcharge to prepaid cellular telephones.

SPONSORS: Rep. Introne, Rock 5; Rep. Rappaport, Coos 1; Rep. Devine, Rock 4; Rep. Flanders,
Belk 3; Rep. Richardson, Coos 4

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill applies the E911 surcharge to prepaid cellular telephones.

The bill is a request of the department of safety.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT applying the E911 surcharge to prepaid cellular telephones.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 230:1 New Paragraph; Enhanced 911 System; Definition of Commercial Mobile Radio Service.
2 Amend RSA 106-H:2 by inserting after paragraph III the following new paragraph:

3 III-a. “Commercial mobile radio service” means commercial mobile radio service as defined
4 in 47 C.F.R. section 20.3.

5 230:2 New Paragraph; Enhanced 911 System; Definition of Prepaid Commercial Mobile Radio
6 Service. Amend RSA 106-H:2 by inserting after paragraph VIII-a the following new paragraph:

7 VIII-b. “Prepaid commercial mobile radio service” means commercial mobile radio service
8 that allows a caller to dial 911 to access the E911 system, which service must be paid for in advance
9 and is either sold in predetermined units or dollars which decline with use in a known amount or is
10 sold for unlimited use during a predetermined period of time.

11 230:3 Enhanced 911 System; Funding. Amend RSA 106-H:9, I(a) to read as follows:

12 I.(a) The enhanced 911 system and the statewide emergency notification system shall be
13 funded through a surcharge to be levied upon each residence and business telephone exchange line,
14 including PBX trunks and Centrex lines, each individual commercial mobile radio service number[.]
15 **and** each VoIP service number with a place of primary use within New Hampshire, and each semi-
16 public and public coin and public access line. For purposes of this subparagraph, “place of primary
17 use” shall have the same meaning as the definition contained in 4 U.S.C. section 124(8). No such
18 surcharge shall be imposed upon more than 25 business telephone exchange lines, including PBX
19 trunks and Centrex lines, or more than 25 commercial mobile radio service exchange lines or VoIP
20 service lines or channels per customer billing account.

21 230:4 Enhanced 911 System; Funding. Amend RSA 106-H:9, I(c) to read as follows:

22 (c) In the case of an entity which provides commercial mobile radio service the surcharge
23 shall be billed to each customer on a monthly basis and shall not be subject to any state or local tax;
24 the surcharge shall be collected by the commercial mobile radio service provider, and may be
25 identified on the customer’s bill. ***For prepaid commercial mobile radio service, the provisions***
26 ***of paragraph I-a shall apply.***

27 230:5 Enhanced 911 System; Funding. Amend RSA 106-H:9, I(e) to read as follows:

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1 (e) Each local exchange telephone company, VoIP service provider, or entity which
2 provides commercial mobile radio service, ***including prepaid commercial mobile radio service***
3 ***except as otherwise provided in subparagraph I-a(i)***, shall remit the surcharge amounts on a
4 monthly basis, as prescribed by the commissioner, to the enhanced 911 services bureau, which shall
5 be forwarded to the state treasurer for deposit in the enhanced 911 system fund. The state treasurer
6 shall pay expenses incurred in the administration of the enhanced 911 system and the statewide
7 emergency notification system from such fund. Such fund shall not lapse. If the expenditure of
8 additional funds over budget estimates is necessary for the proper functioning of the enhanced 911
9 system or the statewide emergency notification system, the department of safety may request, with
10 prior approval of the fiscal committee of the general court, the transfer of funds from the enhanced
11 911 system fund to the department of safety for such purposes. The moneys in the account shall not
12 be used for any purpose other than the development and operation of enhanced 911 services and the
13 statewide emergency notification system, in accordance with the terms of this chapter. Surcharge
14 amounts shall be reviewed after the budget has been approved or modified, and if appropriate, new
15 tariffs or rate schedules shall be filed with the public utilities commission reflecting the surcharge
16 amount.

17 230:6 New Paragraph; Enhanced 911 System; Funding; Prepaid Commercial Mobile Radio
18 Service. Amend RSA 106-H:9 by inserting after paragraph I the following new paragraph:

19 I-a. Prepaid commercial mobile radio service.

20 (a) In this paragraph:

21 (1) “Consumer” means a natural person or any other person who purchases prepaid
22 commercial mobile radio service in a retail transaction.

23 (2) “Commissioner” means the commissioner of the department of safety.

24 (3) “Division” means the division of emergency services and communications of the
25 department of safety.

26 (4) “Entity” means a natural person or any other person, including any firm,
27 corporation, partnership, or business organization.

28 (5) “Provider” means an entity that provides prepaid commercial mobile radio service
29 pursuant to a license issued by the Federal Communications Commission.

30 (6) “Retail transaction” means the purchase of prepaid commercial mobile radio
31 service from a seller for any purpose other than resale.

32 (7) “Seller” means an entity, including a provider, who sells prepaid commercial
33 mobile radio service to a consumer.

34 (b) There is hereby imposed a prepaid commercial mobile radio service E911 surcharge
35 that shall be levied on each retail transaction sourced to New Hampshire. The amount of the
36 surcharge levied for each retail transaction shall be the same as the surcharge imposed under

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1 RSA106-H:9, I(a).

2 (c) For purposes of subparagraph (b), a retail transaction is sourced to New Hampshire:

3 (1) If the transaction occurs in person at a seller's location in New Hampshire; or

4 (2) If subparagraph (1) does not apply, the prepaid commercial mobile radio service
5 is evidenced by a physical item, such as a card, and the purchaser provides a New Hampshire
6 delivery address for such item; or

7 (3) If subparagraphs (1) and (2) do not apply, the consumer gives a New Hampshire
8 address during the consummation of the sale, including the address associated with the consumer's
9 payment instrument if no other address is available, and the address is not given in bad faith; or

10 (4) If subparagraphs (1) – (3) do not apply, the consumer's mobile telephone number
11 is associated with a postal zip code, telephone area code, or location within New Hampshire.

12 (d) The prepaid commercial mobile radio service E911 surcharge shall be collected by the
13 seller from the consumer with respect to each retail transaction sourced to New Hampshire. The
14 amount of the surcharge shall be either separately stated on an invoice, receipt, or other similar
15 document that is provided by the seller to the consumer, or otherwise disclosed to the consumer.

16 (e) The seller shall be liable to remit all charges required by this paragraph that are
17 collected from consumers, including all such charges that the seller is deemed to collect where the
18 amount of the surcharge has not been separately stated on an invoice, receipt, or other similar
19 document provided by the seller to the consumer.

20 (f) The prepaid commercial mobile radio service E911 surcharge shall not be subject to
21 any other state or local tax.

22 (g) If a minimal amount of prepaid commercial mobile radio service is sold with a
23 prepaid mobile device for a single, non-itemized price, then the seller may elect not to apply the
24 surcharge to such transaction. For purposes of this subparagraph, an amount of service
25 denominated as 10 minutes or less, or 5 dollars or less, is minimal.

26 (h) A seller may deduct and retain 3 percent of the prepaid commercial mobile radio
27 service E911 charges that are collected by the seller from consumers.

28 (i) A seller having less than 150 retail transactions in a calendar quarter and who has
29 not collected the surcharge on such transactions shall not be required to remit the surcharge on
30 those transactions, provided that the seller:

31 (1) Submits a certification to the enhanced 911 services bureau, not later than the
32 15th day following such quarter, that the seller had less than 150 retail transactions in such quarter;
33 and

34 (2) Submits with such certification copies of invoices, receipts, or other similar
35 documentation establishing the number of retail transactions in such quarter.

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1 (j) Whenever lawful, providers and sellers of prepaid commercial mobile radio service
2 shall put forth reasonable good faith efforts to cooperate with and provide timely and reasonable
3 assistance to the division, its E911 telecommunications supervisors and investigative or law
4 enforcement officers of this state, or any town, city, or county in this state, in connection with
5 locating the source of any emergency E911 call or lawful investigation or activity by such
6 telecommunications supervisor or law enforcement officer. In such instances, providers and sellers
7 of prepaid commercial mobile radio service shall not be liable for damages to any person resulting
8 from or incurred in connection with the provision of such lawful assistance.

9 (k) Beginning on January 1, 2016, prepaid commercial mobile radio service providers
10 shall report annually to the division the total number of active prepaid commercial mobile radio
11 service customers in New Hampshire. For purposes of such report, “active prepaid commercial
12 mobile radio service customers” shall include all prepaid commercial mobile radio service customers
13 with a New Hampshire telephone number on the date of the report, or if account balance information
14 is not available, otherwise determined not to be active by comparable data. All information
15 submitted to the division by a provider shall be considered proprietary and confidential and shall not
16 be considered a public record under RSA 91-A.

17 230:7 Enhanced 911 System; Funding; Records Disclosure. Amend RSA 106-H:9, III(b)(3) to
18 read as follows:

19 (3) Disclosure to the department of revenue administration of records, files, and
20 information required by the department of revenue administration to administer the
21 communications services tax pursuant to RSA 82-A ***and to assist the bureau in its***
22 ***administration of RSA 106-H:9.***

23 230:8 Effective Date. This act shall take effect January 1, 2016.

24
25 Approved: July 13, 2015

26 Effective Date: January 1, 2016