

IC 36-8-16.6

Chapter 16.6. Enhanced Prepaid Wireless Telecommunications Service Charge

IC 36-8-16.6-1

"Board"

Sec. 1. As used in this chapter, "board" refers to the statewide 911 board established by IC 36-8-16.7-24.

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.13.

IC 36-8-16.6-2

"Consumer"

Sec. 2. As used in this chapter, "consumer" means a person that purchases prepaid wireless telecommunications service from a seller. The term includes a prepaid user.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-3

"Department"

Sec. 3. As used in this chapter, "department" refers to the department of state revenue.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-4

"Enhanced prepaid wireless charge"

Sec. 4. As used in this chapter, "enhanced prepaid wireless charge" means the charge that a seller is required to collect from a consumer under section 12 of this chapter.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-5

"Fund"

Sec. 5. As used in this chapter, "fund" refers to the statewide 911 fund established by IC 36-8-16.7-29.

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.14.

IC 36-8-16.6-6

"Prepaid user"

Sec. 6. As used in this chapter, "prepaid user" refers to a user of prepaid wireless telecommunications service who:

- (1) is issued an Indiana telephone number or an Indiana identification number for the service; or
- (2) purchases prepaid wireless telecommunications service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-7

"Prepaid wireless telecommunications service"

Sec. 7. As used in this chapter, "prepaid wireless telecommunications service" means a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) that allows a user of the service to reach emergency services by dialing the digits nine (9) one (1) one (1).

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-8

"Provider"

Sec. 8. As used in this chapter, "provider" means a person or entity that offers prepaid wireless telecommunications service.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-9

"Retail transaction"

Sec. 9. As used in this chapter, "retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-10

"Seller"

Sec. 10. As used in this chapter, "seller" means a person that sells prepaid wireless telecommunications service to another person.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-11

Enhanced prepaid wireless charge; responsibility of eligible telecommunications carriers

Sec. 11. (a) The board shall impose an enhanced prepaid wireless charge on each retail transaction. Except as provided in subsection (e), the amount of the charge is one dollar (\$1).

(b) The board may increase the enhanced prepaid wireless charge to ensure adequate revenue for the board to fulfill its duties and obligations under this chapter and IC 36-8-16.7. The following apply to an increase in the enhanced prepaid wireless charge:

(1) The board may increase the charge only one (1) time after June 30, 2015, and before July 1, 2020.

(2) The board may increase the charge only after review by the budget committee.

(3) If the board increases the charge, the amount of the increase must be ten cents (\$0.10).

(c) A consumer that is the federal government or an agency of the federal government is exempt from the enhanced prepaid wireless charge imposed under this section.

(d) This subsection applies to a provider that is designated by the Indiana utility regulatory commission as an eligible

telecommunications carrier for purposes of receiving reimbursement from the universal service fund through the administrator designated by the Federal Communications Commission. A provider:

- (1) is not considered an agency of the federal government for purposes of the exemption set forth in subsection (c); and
- (2) with respect to prepaid wireless telecommunications service provided to end users by the provider in its capacity as an eligible telecommunications carrier, is liable for the enhanced prepaid wireless charge imposed under subsection (e).

(e) A provider described in subsection (d) shall pay to the board the following charges:

(1) Not later than August 1, 2015, a one (1) time charge equal to the product of the following factors:

(A) The enhanced prepaid wireless charge established under subsection (a).

(B) The number of unique end users for which the provider received reimbursement from the universal service fund during the immediately preceding month.

(C) The number of months under the current service agreement between each end user described in clause (B) and the provider for which the provider has received reimbursement from the universal service fund before August 1, 2015.

(2) Beginning September 1, 2015, and on the first day of each month thereafter, a charge equal to the product of the following factors:

(A) The enhanced prepaid wireless charge established under subsection (a).

(B) The number of unique end users for which the provider received reimbursement from the universal service fund during the immediately preceding month.

The provider may bill and collect from each end user the charges calculated under this subdivision with respect to the end user. The provider shall determine the manner in which the provider bills and collects the charges. A provider may not bill and collect from an end user an amount greater than the charges paid by the provider to the board with respect to the end user.

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.15; P.L.107-2014, SEC.6; P.L.157-2015, SEC.4.

IC 36-8-16.6-12

Collection of fee by seller

Sec. 12. (a) A seller shall collect the enhanced prepaid wireless charge from the consumer with respect to each retail transaction.

(b) The seller shall disclose to the consumer the amount of the enhanced prepaid wireless charge. The seller may separately state the amount of the enhanced prepaid wireless charge on an invoice, a receipt, or a similar document that the seller provides to the consumer in connection with the retail transaction.

(c) Subject to section 15 of this chapter, a seller shall remit enhanced prepaid wireless charges to the department at the time and in the manner prescribed by the department.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-13

Consumer's liability for charge; seller's obligation to remit charges collected

Sec. 13. The enhanced prepaid wireless charge is the liability of the consumer and not of the seller or a provider. However, a seller is liable to remit to the department all enhanced prepaid wireless charges that the seller collects from consumers under section 12 of this chapter, including all charges that the seller is considered to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.16.

IC 36-8-16.6-14

Exclusion of fee from calculation of certain taxes and other charges

Sec. 14. The amount of the enhanced prepaid wireless charge that is collected by a seller from a consumer, whether or not separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, may not be included in the base for determining a tax, fee, surcharge, or other charge that is imposed by the state, a political subdivision, or any other governmental agency.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-15

Seller's allowance for collection

Sec. 15. A seller may deduct and retain one percent (1%) of enhanced prepaid wireless charges that the seller collects from consumers to reimburse the direct costs incurred by the seller in collecting and remitting enhanced prepaid wireless charges.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-16

Audits of seller records

Sec. 16. (a) A seller is subject to the same audit and appeal procedures with respect to the collection and remittance of enhanced prepaid wireless charges as with collection and remittance of the state gross retail tax under IC 6-2.5.

(b) An audit under subsection (a) must be conducted either:

- (1) jointly by the department of state revenue and the board; or
- (2) by an independent auditor engaged by the board to conduct a cost effective flat rate audit.

(c) If an independent auditor is engaged by the board under subsection (b)(2), the terms of the engagement may not:

- (1) be of an indefinite term;
- (2) include hourly or per diem fees; or
- (3) include payment based on contingency.

As added by P.L.113-2010, SEC.151. Amended by P.L.181-2015, SEC.49.

IC 36-8-16.6-17

Administrative guidance; audits; reports

Sec. 17. (a) The department, in conjunction and coordination with the board, shall establish procedures:

- (1) governing the collection and remittance of enhanced prepaid wireless charges in accordance with the procedures established under IC 6-8.1 concerning listed taxes; and
- (2) allowing a seller to document that a sale of prepaid wireless telecommunications service is not a retail transaction.

(b) A procedure established under subsection (a)(1):

- (1) must take into consideration the differences between large and small sellers, including smaller sales volumes; and
- (2) may establish lower thresholds for the remittance of enhanced prepaid wireless charges by small sellers.

For purposes of this subsection, a small seller is a seller that sells less than one hundred dollars (\$100) of prepaid wireless telecommunications service each month.

(c) On an annual basis, the board may audit providers to determine compliance with procedures established under subsection (a). Not later than March 1 of the year immediately following an audit, the board shall submit, in an electronic format under IC 5-14-6, a copy of the audit to the general assembly and the budget committee.

As added by P.L.113-2010, SEC.151. Amended by P.L.157-2015, SEC.5.

IC 36-8-16.6-18

Department's duty to deposit remitted charges in fund; board to administer money in fund

Sec. 18. (a) The department shall deposit all remitted enhanced prepaid wireless charges in the fund.

(b) The board shall administer money deposited in the fund under this section in the same manner as it administers statewide 911 fees assessed under IC 36-8-16.7-32.

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.17.

IC 36-8-16.6-19

Limitation on liability of seller

Sec. 19. A seller of prepaid wireless telecommunications service is not liable for damages to a person resulting from or incurred in connection with the following:

- (1) Providing or failing to provide 911 or wireless 911 services.
- (2) Identifying or failing to identify the telephone number,

address, location, or name associated with a person or device that accesses or attempts to access 911 or wireless 911 service.
(3) Providing lawful assistance to an investigative or law enforcement officer of the United States, a state, or a political subdivision of a state in connection with a lawful investigation or other law enforcement activity by the law enforcement officer.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-20

Limitation on additional fees

Sec. 20. (a) An additional fee relating to the provision of 911 service with respect to prepaid wireless telecommunications service may not be levied by a state agency or local unit of government.

(b) The enhanced prepaid wireless charge imposed by section 12 of this chapter is not considered an additional charge relating to the provision of 911 service for purposes of IC 36-8-16.7-32(d).

As added by P.L.113-2010, SEC.151. Amended by P.L.132-2012, SEC.18.

IC 36-8-16.6-21

Collection of fees directly from purchaser or consumer

Sec. 21. The following are not required to take legal action to enforce the collection of an enhanced prepaid wireless charge that is imposed on a consumer:

- (1) A provider.
- (2) A seller.

However, the department or the board may initiate a collection action. A court finding for the department or the board, as applicable, in an action may award reasonable costs and attorney's fees associated with the collection action.

As added by P.L.113-2010, SEC.151.

IC 36-8-16.6-22

Repealed

(As added by P.L.113-2010, SEC.151. Repealed by P.L.132-2012, SEC.19.)