

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 646**

Introduced by McDonnell, 5.

Read first time January 18, 2023

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications; to amend section  
2 86-457, Reissue Revised Statutes of Nebraska, and sections 86-458  
3 and 86-903, Revised Statutes Cumulative Supplement, 2022; to change  
4 provisions under the Enhanced Wireless 911 Services Act relating to  
5 surcharges and public hearings; to harmonize provisions; and to  
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-457, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 86-457 (1) Each wireless carrier shall collect a ~~:(a)~~ A surcharge  
4 of up to one dollar seventy cents, ~~except as provided in subdivision (1)~~  
5 ~~(b) of this subsection~~, on all active telephone numbers or functional  
6 equivalents every month from users of wireless service and shall remit  
7 the surcharge in accordance with section 86-459; ~~or (b) A surcharge of up~~  
8 ~~to fifty cents on all active telephone numbers or functional equivalents~~  
9 ~~every month from users of wireless service whose primary place of use is~~  
10 ~~in a county containing a city of the metropolitan class and shall remit~~  
11 ~~the surcharge in accordance with section 86-459. The wireless carrier is~~  
12 not liable for any surcharge not paid by a customer.

13 (2) Except as otherwise provided in this section, the wireless  
14 carrier shall add the surcharge to each user's billing statement. The  
15 surcharge shall appear as a separate line-item charge on the user's  
16 billing statement and shall be labeled as "Enhanced Wireless 911  
17 Surcharge" or a reasonable abbreviation of such phrase.

18 (3) If a wireless carrier, except as otherwise provided in this  
19 section, resells its service through other entities, each reseller shall  
20 collect the surcharge from its customers and shall remit the surcharge in  
21 accordance with section 86-459.

22 (4) The surcharges authorized by this section shall not apply to  
23 prepaid wireless telecommunications service as defined in section 86-902.

24 (5) This section shall not apply to users who have no 911 service.

25 Sec. 2. Section 86-458, Revised Statutes Cumulative Supplement,  
26 2022, is amended to read:

27 86-458 The commission shall hold a public hearing annually to  
28 determine the amount of revenue necessary to carry out the Enhanced  
29 Wireless 911 Services Act and the 911 Service System Act. After the  
30 hearing, the commission shall determine the amount of money to be  
31 deposited in the 911 Service System Fund for the following year to

1 maximize operational support for all public safety answering points in  
2 the state and shall set the surcharge subject to the limitation in  
3 section 86-457.

4 Sec. 3. Section 86-903, Revised Statutes Cumulative Supplement,  
5 2022, is amended to read:

6 86-903 (1) The Department of Revenue shall determine the prepaid  
7 wireless surcharge annually, effective January 1, based on the charges  
8 described in subsection (2) of this section as in effect on the preceding  
9 July 1. The department shall provide not less than ninety days' advance  
10 notice of any change in the prepaid wireless surcharge on the  
11 department's website.

12 (2) The rate of the prepaid wireless surcharge shall be the sum of  
13 the following three percentages, rounded up to the nearest tenth of one  
14 percent:

15 (a) The percentage obtained by dividing (i) the amount of the  
16 wireless E-911 surcharge authorized under subsection (1) subdivision (1)  
17 ~~(b)~~ of section 86-457 by (ii) fifty;

18 (b) The percentage obtained by dividing (i) the amount of the  
19 Nebraska Telecommunications Relay System Fund surcharge set by the Public  
20 Service Commission pursuant to the Telecommunications Relay System Act by  
21 (ii) fifty; and

22 (c) The percentage obtained by multiplying (i) the Nebraska  
23 Telecommunications Universal Service Fund surcharge percentage rate set  
24 by the Public Service Commission by (ii) one minus the Federal  
25 Communications Commission safe harbor percentage for determining the  
26 interstate portion of a fixed monthly wireless charge.

27 (3) The Department of Revenue shall provide the Public Service  
28 Commission with prepaid wireless surcharge calculation and collection  
29 data upon request by the commission.

30 (4) Beginning January 1, 2013, each seller shall collect the prepaid  
31 wireless surcharge from the consumer with respect to each retail

1 transaction occurring in this state. The seller shall disclose the amount  
2 of the prepaid wireless surcharge either separately on an invoice,  
3 receipt, or other similar document that is provided to the consumer by  
4 the seller or otherwise. A retail transaction that is effected in person  
5 by a consumer at a business location of the seller shall be treated as  
6 occurring in this state if that business location is in this state, and  
7 any other retail transaction shall be treated as occurring in this state  
8 if the retail transaction is treated as occurring in this state for  
9 purposes of section 77-2703.

10 (5) The prepaid wireless surcharge is the liability of the consumer  
11 and not of the seller or of any provider, except that the seller shall be  
12 liable to remit all prepaid wireless surcharges that the seller collects  
13 from consumers as provided in section 86-904, including all such charges  
14 that the seller is deemed to collect when the amount of the charge has  
15 not been separately stated on an invoice, receipt, or other similar  
16 document provided to the consumer by the seller.

17 (6) The amount of the prepaid wireless surcharge that is collected  
18 by a seller from a consumer, whether or not such amount is separately  
19 stated on an invoice, receipt, or other similar document provided to the  
20 consumer by the seller, shall not be included in the base for measuring  
21 any tax, fee, surcharge, or other charge that is imposed by this state,  
22 any political subdivision of this state, or any intergovernmental agency.

23 (7) For purposes of subsection (4) of this section, when prepaid  
24 wireless telecommunications service is sold with one or more other  
25 products or services for a single, non-itemized price, the seller shall  
26 elect to treat the price of the prepaid wireless telecommunications  
27 service (a) as such entire non-itemized price, (b) if the amount of  
28 prepaid wireless telecommunications service is disclosed to the consumer  
29 as a dollar amount, as such dollar amount, or (c) if the retailer can  
30 identify the portion of the price that is attributable to the prepaid  
31 wireless telecommunications service by reasonable and verifiable

1 standards from its books and records that are kept in the regular course  
2 of business for other purposes, including, but not limited to, nontax  
3 purposes, as such portion. If the amount of prepaid wireless  
4 telecommunications service is denominated as ten minutes or less or as  
5 five dollars or less, the seller may elect not to collect any prepaid  
6 wireless surcharge with respect to the retail transaction.

7       Sec. 4.    Original section 86-457, Reissue Revised Statutes of  
8 Nebraska, and sections 86-458 and 86-903, Revised Statutes Cumulative  
9 Supplement, 2022, are repealed.