

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2019 REGULAR SESSION
Unofficial Document

Amend printed copy of **SB 141/GA**

Beginning on page 1, line 4, and continuing through page 3, line 8, delete Sections 1 and 2 in their entireties and insert in lieu thereof the following:

"➔Section 1. KRS 65.7636 is amended to read as follows:

(1) As used in this section, "Lifeline provider" means a CMRS provider that the Kentucky Public Service Commission has deemed or deems eligible to participate in the wireless low-income Lifeline program and to receive reimbursement from the universal service fund managed by the Federal Communications Commission pursuant to the federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq.

(2) A Lifeline provider shall not be liable for any~~fa~~ CMRS service charge ~~equal to the amount of the CMRS postpaid service charge levied under KRS 65.7629 and shall remit payment to the Kentucky 911 Services Board, less the administrative fee described in subsection (6) of this section, as follows:~~

~~(a) Beginning February 1, 2017, an amount equal to the product of the following factors:~~

- ~~1. The amount of the postpaid CMRS service charge levied under KRS 65.7629;~~
~~and~~
- ~~2. The number of unique end users with Kentucky addresses for which the Lifeline provider received reimbursement from the universal service fund during the immediately preceding month.~~

Amendment No. _____

Rep. Rep. McKenzie Cantrell

Committee Amendment _____

Signed: _____

Floor Amendment _____

Not for Filing

LRC Drafter: Kasacavage, Stefan

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Unofficial Document

- ~~(b) — A Lifeline provider liable for the CMRS service charge levied under this subsection may bill and collect from each end user the charges calculated under this subsection with respect to each end user. The Lifeline provider shall determine the manner it uses to bill and collect the charges owed under this subsection. A Lifeline provider shall not bill or collect from an end user an amount greater than the charges paid by the Lifeline provider to the Kentucky 911 Services Board with respect to each end user.~~
- ~~(3) — Each Lifeline provider shall act as a collection agent of the service charge levied by this section for the CMRS fund. Each Lifeline provider shall list the service charge as a separate entry on any bill which includes the service charge.~~
- ~~(4) — A Lifeline provider has no obligation to take any legal action to enforce the collection of the service charge levied by this section. Collection actions to enforce the collection of the service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county of residence of the end user, and the reasonable costs and attorney's fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.~~
- ~~(5) — State and local taxes shall not apply to a separately stated service charge levied by this section.~~
- ~~(6) — To reimburse itself for the cost of collecting and remitting the service charge levied by this section, each Lifeline provider may deduct and retain from the service charges it collects during each calendar month an amount not to exceed one and one half percent (1.5%) of the gross aggregate amount of the service charges it collected that month.~~
- ~~(7) — All service charges levied by this section collected by each Lifeline provider, less the administrative fee described in subsection (6) of this section, are due and payable to the board monthly and shall be remitted on or before thirty (30) days after the end of the~~

Unofficial Document

~~calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorney's fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.~~

~~(8) Nothing in this section shall be interpreted or otherwise construed to impact litigation pending in the courts of the Commonwealth commencing on or before March 1, 2016, regarding the application of CMRS fees imposed prior to January 1, 2017, to CMRS providers receiving reimbursement from the universal service fund].~~

➔Section 2. KRS 65.7621 is amended to read as follows:

As used in KRS 65.7621 to 65.7643, unless the context requires otherwise:

- (1) "Administrator" means the person who serves as the state 911 coordinator, the executive director of the Kentucky 911 Services Board, and the state administrator of CMRS emergency telecommunications under KRS 65.7625;
- (2) "Automatic location identification", or "ALI" means a feature by which the location or estimated location of the calling party is made available to a PSAP in accordance with applicable FCC rules and regulations;
- (3) "Automatic number identification", or "ANI" means a feature that allows for the automatic display of the 911 caller's ten-digit number, or equivalent, in accordance with applicable FCC rules and regulations;
- (4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive

Unofficial Document

- equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;
- (5) "Board" means the Kentucky 911 Services Board;
 - (6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer;
 - (7) "CMRS customer" means an end user to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation;
 - (8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund;
 - (9) "CMRS provider" means a person or entity who provides CMRS to an end user. The term includes both facilities-based resellers and nonfacilities-based resellers;
 - (10) "CMRS service charges" means the CMRS postpaid service charge and the CMRS prepaid service charge, ~~and the CMRS service charge fee levied under KRS 65.7636~~;
 - (11) "CMRS postpaid service charge" means the CMRS emergency telephone service charge fee levied under KRS 65.7629(3) and collected under KRS 65.7635;
 - (12) "CMRS prepaid service charge" means the fee imposed on prepaid wireless telecommunications service under KRS 65.7634 and collected under KRS 142.100 to 142.135;
 - (13) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof;
 - (14) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth;
 - (15) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP;

Unofficial Document

- (16) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection;
- (17) "Next generation 911" means a 911 system where any device capable of making a 911 emergency request uses digital technology through managed emergency services Internet protocol networks composed of functional elements and databases that replicate enhanced 911 features and functions while providing additional multimedia capabilities for the PSAP. "Next generation 911" includes any technology, functions, capabilities, best practices, or processes, either currently existing or later developed, that will be used during and after the transition of the delivery of 911 services from analog to digital technology;
- (18) "Prepaid wireless telecommunications service" means a wireless telecommunications service that:
- (a) If purchased, must be paid for in advance;
 - (b) Is sold or provided in predetermined units of time or dollars that decline in a known amount of use or time; and
 - (c) Provides the user with access to 911 emergency service;
- "Prepaid wireless telecommunications service" includes service provided by prepaid wireless providers approved as eligible telecommunications companies by the Kentucky Public Service Commission to participate in the wireless low-income Lifeline program;
- (19) "Prepaid wireless telecommunications service provider" means a person or entity that provides prepaid wireless telecommunications service as authorized by a license issued by the FCC;
- (20) "Proprietary information" means information, including customer lists and other related information, technology descriptions, technical information, or trade secrets;
- (21) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face;

Unofficial Document

- (22) "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;
- (23) "Purchaser" means a person who purchases prepaid wireless telecommunications service in a retail transaction;
- (24) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a retailer for any purpose other than resale;
- (25) "Retailer" means a person who sells prepaid wireless telecommunications service to any person for a purpose other than resale;
- (26) "Service connection" means the transmission, conveyance, or routing of voice, data, video, text, or any other information signal of the purchaser's choosing by any medium or method now in existence or later devised with the ability to directly connect the user to 911 emergency services;
- (27) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber;
- (28) "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the end user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order; and
- (29) "Tier III CMRS provider" means a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of December

31, 2001.

➔Section 3. KRS 65.7627 is amended to read as follows:

There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the Kentucky 911 Services Board. The CMRS service charges levied under KRS 65.7629 and 65.7634~~, and 65.7636~~ shall generate revenue equitably from prepaid and postpaid CMRS connections within the boundaries of the Commonwealth. No charges other than the CMRS service charges levied under KRS 65.7629 and 65.7634~~, and 65.7636~~ are authorized to be levied by any person or entity for providing wireless service. All revenues collected under KRS 65.7635 and KRS 65.7634~~, 65.7636,~~ and 142.100 to 142.135 shall be deposited directly into the fund, and the board shall direct disbursements from the fund according to the provisions of KRS 65.7631. Moneys in the CMRS fund shall not be the property of the Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not:

- (1) Be loaned to the Commonwealth or to any instrumentality or agency thereof;
- (2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by KRS 65.7621 to 65.7643; or
- (3) Be expended for any purpose other than a purpose authorized by KRS 65.7621 to 65.7643.

➔Section 4. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property or digital property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons

Unofficial Document

who place the contents in the container and sell the contents together with the container; and

- (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from occasional sales of tangible personal property or digital property and the storage, use, or other consumption in this state of tangible personal property or digital property, the transfer of which to the purchaser is an occasional sale;
- (4) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (5) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (6) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of tangible personal property, digital property, or services for use solely in the

government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

- (7) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the department;
- (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
 2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
 3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and

Unofficial Document

- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (8) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (9) (a) Gross receipts derived from the sale of, the following tangible personal property to a manufacturer or industrial processor if the property is to be directly used in the manufacturing or industrial processing process of tangible personal property at a plant facility and which will be for sale:
1. Materials which enter into and become an ingredient or component part of the manufactured product;
 2. Other tangible personal property which is directly used in the manufacturing or industrial processing process, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below;
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, and explosives. The supplies indicated above need not come in direct

Unofficial Document

- contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind; and
- c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, and spray guns and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, and cutting blades. Normally, for industrial tools to be considered directly used in the manufacturing or industrial processing process, they shall come into direct contact with the product being manufactured or processed; and
3. Materials and supplies that are not reusable in the same manufacturing or industrial processing process at the completion of a single manufacturing or processing cycle. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
- (b) The property described in paragraph (a) of this subsection shall be regarded as having been purchased for resale.
- (c) For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity, and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (d) The exemption provided in this subsection does not include repair, replacement, or spare parts;
- (10) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance

Unofficial Document

- with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (11) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
- (a) As used in this subsection:
1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
 2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (12) Gross receipts from the sale of water used in the raising of equine as a business;
- (13) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
- (a) As used in this subsection, "metal retail fixtures" means check stands and belted and

- nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (15) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (16) Gross receipts from the sale of tangible personal property or digital property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other tangible personal property or digital property at a price greater than the amount charged for the property that is returned;
- (17) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (18) The amount of any tax imposed by the United States upon or with respect to retail sales,

Unofficial Document

- whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (19) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
- (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
 - (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
 - 1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
 - 2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;
- (20) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- (21) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board;
- (22) Gross receipts from the collection of:
- (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
 - (b) The charge imposed by KRS 65.7629(3); and
 - (c) The fee imposed by KRS 65.7634[; ~~and~~
 - ~~(d) The service charge imposed by KRS 65.7636]; and~~
- (23) Gross receipts derived from charges for labor or services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process, and that is not otherwise exempt under subsection (9) of this section or KRS 139.480(10), if the charges for labor or services are separately stated on the invoice, bill of

sale, or similar document given to purchaser."