

House Bill 3692

Sponsored by Representative MATTHEWS, Senator EDWARDS; Representatives BAILEY, BARKER, BENTZ, BERGER, CLEM, HUFFMAN, JENSON, OLSON, READ, ROBLAN, G SMITH, Senators BEYER, STARR, VERGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes alternative methods for telecommunications provider to satisfy requirement to collect and remit tax on customer access to 9-1-1 emergency reporting system from prepaid telecommunications service customers. Defines terms.

A BILL FOR AN ACT

1
2 Relating to 9-1-1 emergency reporting system; creating new provisions; amending ORS 403.105,
3 403.135, 403.200, 403.210, 403.220, 403.225 and 403.230 and section 4, chapter 5, Oregon Laws
4 2002 (first special session); and providing for revenue raising that requires approval by a
5 three-fifths majority.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 403.105 is amended to read:

8 403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context requires otherwise:

9 (1) "Account" means the Emergency Communications Account **established under ORS**
10 **403.235.**

11 (2) "Central office" means a utility that houses the switching and trunking equipment serving
12 telephones in a defined area.

13 (3) "**Customer**" means a person that has telecommunications service with access to the
14 **9-1-1 emergency reporting system through local exchange service, cellular service, fixed**
15 **interconnected voice over Internet protocol service or other wired or wireless means.**

16 [(3)] (4) "Department" means the Department of Revenue.

17 [(4)] (5) "Emergency call" means a [*telephone*] request **for service to a public safety answering**
18 **point that is communicated through local exchange service, cellular service, fixed intercon-**
19 **connected voice over Internet protocol service or other wired or wireless means and** that results
20 from a situation in which prompt service is essential to preserve human life or property.

21 [(5)] (6) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a net-
22 work, database and on-premises equipment that provides automatic display of the incoming tele-
23 phone number and address in the designated public safety answering point at the time of receiving
24 an incoming 9-1-1 call.

25 [(6)] (7) "Exchange access services" means:

26 (a) Telephone exchange access lines or channels that provide local access by a [*subscriber*]
27 **customer** in this state to the local telecommunications network to effect the transfer of information;
28 and

29 (b) Unless a separate tariff rate is charged therefor, any facility or service provided in con-
30 nection with the services described in paragraph (a) of this subsection.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(8) “Fixed interconnected voice over Internet protocol service” means a telecommuni-**
 2 **cations service that utilizes an Internet protocol to enable a customer to participate in**
 3 **real-time two-way voice communication.**

4 [(7)] **(9) “Governing body”** means the board of county commissioners of a county, city council
 5 of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1
 6 jurisdiction.

7 [(8)] **(10) “Local government”** has the meaning given that term in ORS 190.710.

8 **(11) “Prepaid telecommunications service” means any telecommunications service paid**
 9 **for by a customer prior to activation or use of the service.**

10 [(9)] **(12) “Provider”** means a utility or other vendor or supplier of telecommunications service
 11 or equipment that provides telecommunications **service** with access to the 9-1-1 emergency reporting
 12 system through local exchange service, cellular service, **fixed interconnected voice over Internet**
 13 **protocol service** or other wired or wireless means.

14 [(10)] **(13) “Public or private safety agency”** means any unit of state or local government, a
 15 special-purpose district or a private firm that provides or has authority to provide fire-fighting, po-
 16 lice, ambulance or emergency medical services.

17 [(11)] **(14) “Public safety answering point”** means a 24-hour communications facility established
 18 as an answering location for 9-1-1 calls originating within a given service area. A “primary public
 19 safety answering point” receives all calls directly from the public. A “secondary public safety an-
 20 swering point” *[only]* receives calls **only** from a primary public safety answering point on a transfer
 21 or relay basis.

22 [(12)] *“Subscriber” means a person who has telecommunication access to the 9-1-1 emergency re-*
 23 *porting system through local exchange service, cellular service or other wired or wireless means.]*

24 **(15) “Telecommunications” means a full duplex method of providing the ability to make**
 25 **real-time two-way voice communication initiated, received or terminated through local ex-**
 26 **change service, cellular service, fixed interconnected voice over Internet protocol service or**
 27 **other wired or wireless means.**

28 [(13)] **(16) “TTY”** means a telephone-typewriter used by an individual with a hearing or speech
 29 impairment to communicate with another device or individual.

30 [(14)] **(17) “Utility”** means a utility, as defined in ORS 759.005, a telecommunications carrier, as
 31 defined in ORS 133.721, a municipality or any provider of exchange access services.

32 [(15)] **(18) “Vendor”** means a person providing telephone customer premises equipment or
 33 equipment specific to the operation of enhanced 9-1-1 telephone service.

34 [(16)] **(19) “9-1-1 emergency reporting system”** means a telephone service that provides the users
 35 of a public telephone system the ability to reach a primary public safety answering point by calling
 36 9-1-1.

37 [(17)] **(20) “9-1-1 jurisdiction”** means:

38 (a) An entity created under ORS chapter 190;

39 (b) A county service district established under ORS chapter 451 to provide an emergency com-
 40 munications system;

41 (c) An emergency communications district created under ORS 403.300 to 403.380; or

42 (d) A group of public or private safety agencies *[who]* **that** have agreed in writing to jointly plan
 43 the installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

44 [(18)] **(21) “9-1-1 service area”** means the geographical area that contains the entire central of-
 45 fice serving area from which the primary public safety answering point will have the capability to

1 answer calls placed to 9-1-1.

2 **SECTION 2.** ORS 403.200 is amended to read:

3 403.200. (1) There is imposed on each paying retail [*subscriber who has telecommunication ser-*
 4 *vices*] **customer that has telecommunications service** with access to the 9-1-1 emergency report-
 5 ing system a tax equal to 75 cents per month. The tax must be applied on a telecommunications
 6 circuit designated for a particular [*subscriber*] **customer**. One [*subscriber*] **customer** line must be
 7 counted for each circuit that is capable of generating usage on the line side of the **public** switched
 8 **telephone** network regardless of the quantity or ownership of customer premises equipment con-
 9 nected to each circuit.

10 (2) For providers of central office based services, the tax must be applied to each line that has
 11 unrestricted connection to the **public** switched **telephone** network. Those central office based ser-
 12 vice lines that have restricted connection to the **public** switched **telephone** network must be
 13 charged based on software design in the central office that restricts the number of station calls to
 14 and from the network. [*For cellular, wireless or other radio common carriers, the tax applies on a per*
 15 *instrument basis and only if the subscriber's*]

16 (3) **Except for prepaid telecommunications service, the tax shall be assessed on each**
 17 **customer connection for cellular, wireless, fixed interconnected voice over Internet protocol**
 18 **or other radio common carriers. The tax applies only if the customer's** place of primary use,
 19 as defined and determined under 4 U.S.C. 116 to 126, is within this state.

20 (4) **For customers that purchase prepaid telecommunications service or other customers**
 21 **that are not billed periodically for telecommunications service, the amount charged by the**
 22 **provider must include 75 cents for each monthly period during which the customer is au-**
 23 **thorized to access the prepaid telecommunications service. A provider is deemed to have met**
 24 **its obligation to collect the tax if the provider collects and remits the tax using one of the**
 25 **following options:**

26 (a) **On a monthly basis, the provider shall collect an amount equal to the tax from each**
 27 **active prepaid telecommunications service customer that is authorized to access the service**
 28 **and whose account balance is equal to or greater than the tax; or**

29 (b) **If the provider cannot determine with reasonable specificity the number of prepaid**
 30 **telecommunications service customers that are authorized to access the service, the pro-**
 31 **vider shall determine, on a monthly basis, the number of prepaid telecommunications service**
 32 **customers by dividing the provider's total intrastate monthly income from prepaid telecom-**
 33 **munications service customers by the average income from each prepaid telecommunications**
 34 **service customer of the national prepaid telecommunications service industry and multiply**
 35 **the calculated number of prepaid telecommunications service customers by the amount of**
 36 **the tax.**

37 [(2)] (5) The [*subscriber*] **customer** is liable for the tax imposed by this section.

38 [(3)] (6) The amounts of tax collected by the provider are considered as payment by the [*sub-*
 39 *scriber*] **customer** for that amount of tax.

40 [(4)] (7) Any return made by the provider collecting the tax must be accepted by the Department
 41 of Revenue as evidence of payments by the [*subscriber*] **customer** of amounts of tax so indicated
 42 upon the return.

43 **SECTION 3.** Section 4, chapter 5, Oregon Laws 2002 (first special session), as amended by sec-
 44 tion 1, chapter 4, Oregon Laws 2002 (third special session), and section 1, chapter 629, Oregon Laws
 45 2007, is amended to read:

1 **Sec. 4.** *[(1)]* Taxes imposed under ORS *[401.792]* **403.200** apply to *[subscriber]* **customer** bills is-
 2 sued on or after January 1, 2002, and before January 1, 2014.

3 *[(2) Taxes imposed under ORS 401.792 on or after January 1, 2002, and before May 13, 2002, are*
 4 *due and payable by the subscriber to the provider on or before 20 days after the first day of the month*
 5 *following May 13, 2002. Taxes that are not paid by the subscriber to the provider within the time re-*
 6 *quired shall bear interest at the rate established under ORS 305.220 for each month, or fraction of a*
 7 *month, from the date that is 20 days after the first day of the month following May 13, 2002, until*
 8 *paid.]*

9 *[(3) Unless previously remitted, taxes that are paid to the provider under subsection (2) of this*
 10 *section shall be remitted by the provider to the Department of Revenue at the time and in the same*
 11 *manner as taxes imposed under ORS 401.792 for the first month following May 13, 2002, are remitted*
 12 *to the department.]*

13 **SECTION 4.** ORS 403.135 is amended to read:

14 403.135. (1) Each telecommunications utility that provides exchange access service or radio
 15 communications service and that provides automatic telephone number identification to public safety
 16 answering points may not block the number of the calling party from being forwarded on 9-1-1 calls.

17 (2) Automatic telephone number identifications received by public safety answering points are
 18 confidential and are not subject to public disclosure unless and until an official report is written
 19 by the public or private safety agency and that agency does not withhold the telephone number
 20 under ORS 192.410 to 192.505 or other state and federal laws. The official report of a public safety
 21 answering point may not include nonpublished or nonlisted telephone numbers. The official report
 22 of a public or private safety agency may not include nonpublished or nonlisted telephone numbers.
 23 Nonpublished or nonlisted telephone numbers are not otherwise subject to public disclosure without
 24 the permission of the *[subscriber]* **customer**.

25 (3) A telecommunications utility is not subject to an action for civil damages for providing in
 26 good faith confidential or nonpublic information, including nonpublished and nonlisted *[subscriber]*
 27 **customer** information, to emergency services providers who are responding to emergency calls
 28 placed to a 9-1-1 or an enhanced 9-1-1 emergency reporting system or notifying the public of an
 29 emergency. This subsection does not compel a telecommunications utility to provide nonpublished
 30 and nonlisted *[subscriber]* **customer** information directly to emergency services providers or law
 31 enforcement agencies prior to placement of an emergency call to a 9-1-1 or an enhanced 9-1-1
 32 emergency reporting system without process of law. *[Subscriber]* **Customer** information acquired by
 33 a 9-1-1 jurisdiction for the purpose of enhancing a 9-1-1 emergency reporting system is not subject
 34 to public disclosure and may not be used by other public agencies except:

35 (a) To respond to a 9-1-1 call; or

36 (b) To notify the public of an emergency by utilizing an automated telephone notification system
 37 if a telecommunications utility has provided *[subscriber]* **customer** information to the 9-1-1 juris-
 38 diction or emergency services provider.

39 **SECTION 5.** ORS 403.210 is amended to read:

40 403.210. Every provider *[responsible for the collection of]* **required to collect** the tax imposed by
 41 ORS 403.200 to 403.230 shall keep records, render statements, make returns and comply with rules
 42 adopted by the Department of Revenue with respect to the tax. Whenever in the judgment of the
 43 department it is necessary, the department may require the provider or *[subscriber]* **customer**, by
 44 notice served upon that person by first-class mail, to make returns, render statements or keep re-
 45 cords sufficient to show whether there is tax liability under ORS 403.200 to 403.230.

SECTION 6. ORS 403.220 is amended to read:

403.220. (1) If the amount paid by the provider to the Department of Revenue under ORS 403.215 exceeds the amount of tax payable, the department shall refund the amount of the excess with interest thereon at the rate established under ORS 305.220 for each month or fraction of a month from the date of payment of the excess until the date of the refund. The department may not make a refund to a provider *[who]* **that** fails to claim the refund within two years after the due date for filing of the return with respect to which the claim for refund relates.

(2) A *[subscriber's]* **customer's** exclusive remedy in a dispute involving tax liability is to file a claim with the department.

SECTION 7. ORS 403.225 is amended to read:

403.225. (1) Every provider required to collect the tax imposed by ORS 403.200 to 403.230 is deemed to hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided by ORS 403.215.

(2) If the provider required to collect the tax fails to remit any amount deemed to be held in trust for the State of Oregon or if the *[subscriber]* **customer** fails to pay the tax, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant is issued and proceeded upon in the same manner and has the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

SECTION 8. ORS 403.230 is amended to read:

403.230. (1) Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200 to 403.230 the same as if the tax were a tax imposed upon or measured by net income. The provisions apply to the *[subscriber]* **customer** liable for the tax and to the provider required to collect the tax. As to any amount collected and required to be remitted to the Department of Revenue, the tax is considered a tax upon the provider required to collect the tax and that provider is considered a taxpayer.

(2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose information received under ORS 403.200 to 403.230 to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987.

(3) The Public Utility Commission may disclose information obtained pursuant to chapter 290, Oregon Laws 1987, to the Department of Revenue to administer the tax imposed under ORS 403.200 to 403.230.

SECTION 9. The amendments to ORS 403.105, 403.135, 403.200, 403.210, 403.220, 403.225 and 403.230 and section 4, chapter 5, Oregon Laws 2002 (first special session), by sections 1 to 8 of this 2011 Act apply to monthly periods of telecommunications service that begin on or after January 1, 2013.