

House Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

CHAPTER 198

# **HOUSE BILL 2094**

AN ACT

AMENDING SECTIONS 42-5251 AND 42-5252, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5251, Arizona Revised Statutes, is amended to  
3 read:

4 42-5251. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Customer" means a person or entity in whose name telephone or  
7 telecommunication services are rendered, as evidenced by a signature on an  
8 application or contract for service or by receipt or payment of bills  
9 regularly issued in the person's or entity's name.

10 2. "Emergency telecommunication services" means telecommunication  
11 services or systems that use number 911 or a similarly designated telephone  
12 number for emergency calls.

13 3. "Exchange access services" means telephone or telecommunication  
14 exchange access lines or channels ~~which~~ THAT provide local access from the  
15 premises of a customer to the local telecommunications network to effect the  
16 transfer of information.

17 4. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS WIRELESS  
18 SERVICES THAT ALLOW A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM UNDER A  
19 SERVICE THAT IS PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED UNITS  
20 OR DOLLARS OF WHICH THE NUMBER DECLINES WITH USE IN A KNOWN AMOUNT.

21 ~~4.~~ 5. "Provider" means ANY OF THE FOLLOWING:

22 (a) A public service corporation ~~offering~~ THAT OFFERS telephone or  
23 telecommunications services pursuant to title 40, ~~which~~ AND THAT provides  
24 exchange access services.

25 (b) A SUPPLIER OF WIRELESS SERVICES.

26 (c) A SUPPLIER OF ANY COMBINATION OF WIRE AND WIRELESS SERVICES.

27 ~~5. "Wireless provider" means a supplier of wireless services.~~

28 6. "Wireless services" means ~~two-way voice commercial mobile radio~~  
29 ~~service as defined by the federal communications commission~~ A COMMERCIAL  
30 MOBILE SERVICE, AS DEFINED BY 47 CODE OF FEDERAL REGULATIONS SECTION 20.3, AS  
31 AMENDED.

32 Sec. 2. Section 42-5252, Arizona Revised Statutes, is amended to read:

33 42-5252. Levy of tax; applicability

34 A. A tax is levied on every provider in an amount as follows:

35 1. For the fiscal years beginning from and after June 30, 2001 and  
36 ending before July 1, 2006, thirty-seven cents per month for each activated  
37 wire and wireless service account for the purpose of financing emergency  
38 telecommunication services.

39 2. For fiscal year 2006-2007, twenty-eight cents per month for each  
40 activated wire and wireless service account for the purpose of financing  
41 emergency telecommunication services.

42 3. For the fiscal years beginning from and after June 30, 2007, twenty  
43 cents per month for each activated wire and wireless service account for the  
44 purpose of financing emergency telecommunication services.

1 B. A tax is levied on every ~~provider~~ PUBLIC SERVICE CORPORATION at the  
2 rate of 1.1 per cent of the ~~providers'~~ PUBLIC SERVICE CORPORATIONS' gross  
3 proceeds of sales or gross income derived from the business of providing  
4 exchange access services. Revenues from the tax shall be used for the  
5 purpose of financing telecommunication devices for the deaf and the severely  
6 hearing and speech impaired under the program established pursuant to section  
7 36-1947. FOR THE PURPOSES OF THIS SUBSECTION, "PUBLIC SERVICE CORPORATION"  
8 MEANS A PUBLIC SERVICE CORPORATION THAT OFFERS TELEPHONE OR  
9 TELECOMMUNICATIONS SERVICES PURSUANT TO TITLE 40 AND THAT PROVIDES EXCHANGE  
10 ACCESS SERVICES.

11 C. Each provider shall state on the invoice to customers a separate  
12 line item stating the amount of tax levied pursuant to subsections A and B of  
13 this section.

14 D. Unless the context otherwise requires, article 1 of this chapter  
15 governs the administration of the tax imposed under this section.

16 E. THE TAX LEVIED UNDER THIS SECTION DOES NOT APPLY TO PREPAID  
17 WIRELESS TELECOMMUNICATIONS SERVICE.

18 Sec. 3. Title 42, chapter 5, Arizona Revised Statutes, is amended by  
19 adding article 9, to read:

20 ARTICLE 9. PREPAID WIRELESS TELECOMMUNICATIONS  
21 E911 EXCISE TAX

22 42-5401. Definitions

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

24 1. "CONSUMER" MEANS A PERSON WHO PURCHASES PREPAID WIRELESS  
25 TELECOMMUNICATIONS SERVICE IN A RETAIL SALE OF PREPAID WIRELESS  
26 TELECOMMUNICATIONS SERVICE.

27 2. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS A COMMERCIAL  
28 MOBILE RADIO SERVICE, AS DEFINED BY 47 CODE OF FEDERAL REGULATIONS SECTION  
29 20.3, AS AMENDED, THAT ALLOWS A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM  
30 UNDER A SERVICE THAT IS PAID FOR IN ADVANCE AND THAT IS SOLD IN PREDETERMINED  
31 UNITS OR DOLLARS OF WHICH THE NUMBER DECLINES WITH USE IN A KNOWN AMOUNT.

32 3. "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER" MEANS A  
33 PERSON THAT PROVIDES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE PURSUANT TO  
34 A LICENSE THAT IS ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION.

35 4. "RETAIL SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS  
36 A SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE BY A SELLER FOR ANY  
37 PURPOSE OTHER THAN RESALE.

38 5. "SELLER" MEANS A PERSON WHO SELLS PREPAID WIRELESS  
39 TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

40 6. "WIRELESS SERVICES" MEANS A COMMERCIAL MOBILE SERVICE, AS DEFINED  
41 BY 47 CODE OF FEDERAL REGULATIONS SECTION 20.3, AS AMENDED.

42 42-5402. Levy of tax

43 A. A PREPAID WIRELESS TELECOMMUNICATIONS E911 EXCISE TAX IS LEVIED ON  
44 EVERY SELLER IN AN AMOUNT OF EIGHT TENTHS OF ONE PER CENT OF THE GROSS

1 PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE RETAIL SALE OF PREPAID  
2 WIRELESS TELECOMMUNICATIONS SERVICE.

3 B. THE SELLER IS LIABLE FOR THE TAX IMPOSED UNDER THIS SECTION. THE  
4 AMOUNT OF TAX MAY BE SEPARATELY STATED ON THE INVOICE, RECEIPT OR OTHER  
5 SIMILAR DOCUMENT THAT IS PROVIDED TO THE CONSUMER BY THE SELLER OR OTHERWISE  
6 DISCLOSED TO THE CONSUMER. THE SELLER MAY RETAIN THREE PER CENT OF THE  
7 AMOUNT OF TAX COLLECTED BEFORE REMITTING THE TAX TO THE DEPARTMENT.

8 C. FOR THE PURPOSE OF DETERMINING THE LOCATION OF A RETAIL SALE OF  
9 PREPAID WIRELESS TELECOMMUNICATIONS SERVICE UNDER THIS ARTICLE, A RETAIL SALE  
10 OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE OCCURS IN THIS STATE IF:

11 1. THE RETAIL SALE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IS  
12 COMPLETED IN PERSON AT A BUSINESS LOCATION IN THIS STATE.

13 2. IF PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY, THE PRODUCT IS  
14 DELIVERED TO THE CONSUMER AT AN ADDRESS IN THIS STATE.

15 3. IF PARAGRAPHS 1 AND 2 OF THIS SUBSECTION DO NOT APPLY, THE SELLER'S  
16 RECORDS THAT ARE MAINTAINED IN THE ORDINARY COURSE OF BUSINESS INDICATE THAT  
17 THE CONSUMER'S ADDRESS IS LOCATED IN THIS STATE AND THE SELLER'S RECORDS ARE  
18 NOT MADE OR KEPT IN BAD FAITH.

19 4. IF PARAGRAPHS 1, 2 AND 3 OF THIS SUBSECTION DO NOT APPLY, THE  
20 CONSUMER GIVES THE SELLER AN ADDRESS IN THIS STATE DURING THE COMPLETION OF  
21 THE SALE, INCLUDING THE CONSUMER'S PAYMENT INSTRUMENT IF NO OTHER ADDRESS IS  
22 AVAILABLE, AND THE ADDRESS IS NOT GIVEN IN BAD FAITH.

23 5. IF PARAGRAPHS 1 THROUGH 4 OF THIS SUBSECTION DO NOT APPLY, THE  
24 WIRELESS TELEPHONE NUMBER IS ASSOCIATED WITH A LOCATION IN THIS STATE.

25 D. THE AMOUNT OF TAX THAT IS PAID BY A SELLER SHALL NOT BE INCLUDED IN  
26 THE TAX BASE FOR COMPUTING ANY TRANSACTION PRIVILEGE, SALES, USE, FRANCHISE  
27 OR OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, THAT IS IMPOSED BY THIS  
28 STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY INTERGOVERNMENTAL  
29 AGENCY.

30 E. THE TAX LEVIED UNDER THIS SECTION SHALL BE THE ONLY E911 FUNDING  
31 OBLIGATION FOR PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN THIS STATE.  
32 THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY INTERGOVERNMENTAL  
33 AGENCY SHALL NOT LEVY ANY OTHER SIMILAR TAX OR FEE, HOWEVER DENOMINATED, ON  
34 ANY SELLER OR CONSUMER FOR THE SALE, PURCHASE, USE OR PROVISION OF PREPAID  
35 WIRELESS TELECOMMUNICATIONS SERVICE FOR THE PURPOSE OF FUNDING E911 SERVICE.

36 42-5403. Administration of tax; distribution of revenues

37 A. UNLESS THE CONTEXT OTHERWISE REQUIRES, ARTICLE 1 OF THIS CHAPTER  
38 GOVERNS THE ADMINISTRATION OF THE TAX IMPOSED BY THIS ARTICLE.

39 B. A SEPARATE BOND IS NOT REQUIRED OF EMPLOYEES OF THE DEPARTMENT IN  
40 ADMINISTERING THIS ARTICLE.

41 C. THE PROCEDURES FOR A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS  
42 SERVICE TO DOCUMENT A SALE THAT IS NOT A RETAIL SALE OF PREPAID WIRELESS  
43 TELECOMMUNICATIONS SERVICE SHALL BE SUBSTANTIALLY SIMILAR TO THE PROCEDURES  
44 FOR DOCUMENTING SALE FOR RESALE TRANSACTIONS UNDER THE RETAIL CLASSIFICATION  
45 PURSUANT TO SECTIONS 42-5009 AND 42-5061.

1 D. THE DEPARTMENT SHALL SEPARATELY ACCOUNT FOR THE MONIES PAID UNDER  
2 THIS ARTICLE AND SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, THE  
3 NET REVENUES COLLECTED UNDER THIS ARTICLE IN THE EMERGENCY TELECOMMUNICATIONS  
4 SERVICES REVOLVING FUND ESTABLISHED BY SECTION 41-704.

5 42-5404. Liability

6 A. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR RIGHT TO BRING  
7 AN ACTION AGAINST A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR  
8 LIABLE DAMAGES TO ANY PERSON RESULTING FROM OR INCURRED IN CONNECTION WITH  
9 THE PROVISION OF, OR FAILURE TO PROVIDE, 911 OR E911 SERVICE, OR FOR  
10 IDENTIFYING, OR FAILING TO IDENTIFY, THE TELEPHONE NUMBER, ADDRESS, LOCATION  
11 OR NAME ASSOCIATED WITH ANY PERSON OR DEVICE THAT IS ACCESSING OR ATTEMPTING  
12 TO ACCESS 911 OR E911 SERVICE.

13 B. NOTHING IN THIS ARTICLE CREATES A CAUSE OF ACTION OR RIGHT TO BRING  
14 AN ACTION AGAINST A SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR  
15 DAMAGES TO ANY PERSON RESULTING FROM, OR INCURRED IN CONNECTION WITH, ANY  
16 LAWFUL INVESTIGATION BY A LAW ENFORCEMENT OFFICER OF THE UNITED STATES, THIS  
17 STATE, ANY OTHER STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY  
18 OTHER STATE.

19 Sec. 4. Department of revenue; exemption from rule making

20 The department of revenue is exempt from the rule making requirements  
21 of title 41, chapter 6, Arizona Revised Statutes, for the purposes of  
22 implementing this act.

23 Sec. 5. Effective date

24 This act is effective and applies to taxable periods beginning from and  
25 after December 31, 2013.

APPROVED BY THE GOVERNOR APRIL 5, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2012.

Passed the House February 28, 2012

Passed the Senate April 3, 2012

by the following vote: 55 Ayes,

by the following vote: 20 Ayes,

0 Nays, 4 Not Voting  
1 vacant

9 Nays, 1 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

4 day of April, 2012

at 11:25 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 5<sup>th</sup> day of

April

at 11:35 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 5<sup>th</sup> day of April, 2012

at 4:20 o'clock P M.

[Signature]  
Secretary of State

H.B. 2094