



Reprinted
February 2, 2010

SENATE BILL No. 302

DIGEST OF SB 302 (Updated February 1, 2010 8:25 pm - DI 103)

Citations Affected: IC 34-30; IC 36-8.

Synopsis: 911 fees for prepaid wireless telecommunications service. Requires a seller of prepaid wireless telecommunications service to collect at the point of sale an enhanced prepaid wireless charge that does not exceed 50% of the monthly wireless emergency enhanced 911 fee. Requires the seller to remit the enhanced prepaid wireless charge to the wireless enhanced 911 advisory board for deposit in the wireless emergency telephone system fund. Repeals nonconforming provisions.

Effective: July 1, 2010.

Hershman, Merritt, Wyss

January 11, 2010, read first time and referred to Committee on Homeland Security,
Transportation & Veterans Affairs.
January 28, 2010, amended, reported favorably — Do Pass.
February 1, 2010, read second time, amended, ordered engrossed.

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SB 302—LS 6972/DI 103+



Reprinted
February 2, 2010

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 302

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-2-156.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2010]: **Sec. 156.2. IC 36-8-16.6-18**
4 **(Concerning sellers of prepaid wireless telecommunications service**
5 **for provision of 911 or wireless 911 service and lawful assistance**
6 **to law enforcement officers).**

7 SECTION 2. IC 36-8-16.5-14.5 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14.5. As used in this
9 chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in
10 full prospectively for the service and is issued an Indiana telephone
11 number or an Indiana identification number for the service: **user" has**
12 **the meaning set forth in IC 36-8-16.6-5.**

13 SECTION 3. IC 36-8-16.5-14.7 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14.7. As used in this
15 chapter, "standard ~~subscriber~~ **user" or "user"** refers to a CMRS

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1 ~~subscriber user~~ who pays retrospectively for the service and has an
2 Indiana billing address for the service.

3 SECTION 4. IC 36-8-16.5-22 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. The fund consists
5 of the following:

- 6 (1) Service charges assessed on CMRS users in the state under
7 section 25.5 of this chapter.
- 8 (2) Appropriations made by the general assembly.
- 9 (3) Grants and gifts intended for deposit in the fund.
- 10 (4) Interest, premiums, gains, or other earnings on the fund.
- 11 **(5) Enhanced prepaid wireless charges collected and remitted**
12 **under IC 36-8-16.6-11.**

13 SECTION 5. IC 36-8-16.5-25.5 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 25.5. (a) As used in this
15 section, "customer" and "place of primary use" have the meanings set
16 forth in IC 6-8.1-15.

17 (b) Except as provided in section 34 of this chapter, the board shall
18 assess a monthly wireless emergency enhanced 911 fee on each ~~CMRS~~
19 **subscriber standard user** that is a customer having a place of primary
20 use in Indiana. A customer's place of primary use shall be determined
21 in the manner provided by IC 6-8.1-15.

22 **(c) The fee assessed under subsection (b) does not apply to a**
23 **prepaid user in a retail transaction under IC 36-8-16.6.**

24 SECTION 6. IC 36-8-16.5-29 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 29. An additional fee
26 relating to the provision of wireless 911 service may not be levied by
27 a state agency or local unit of government. **An enhanced prepaid**
28 **wireless charge (as defined in IC 36-8-16.6-3) is not considered an**
29 **additional fee relating to the provision of wireless 911 service for**
30 **purposes of this section.**

31 SECTION 7. IC 36-8-16.5-30.5 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 30.5. (a) As used in this
33 section, "customer" and "place of primary use" have the meanings set
34 forth in IC 6-8.1-15.

35 (b) Except as provided in section 34 of this chapter, ~~each a~~ CMRS
36 provider shall, **as part of its normal monthly billing process**, collect
37 the wireless emergency enhanced 911 fee assessed under section 25.5
38 of this chapter ~~as follows (†) As part of its normal monthly billing~~
39 ~~process; a CMRS provider shall collect the fee from each standard~~
40 **subscriber user** that is a customer having a place of primary use in
41 Indiana and may list the fee as a separate line item on each bill. A
42 customer's place of primary use shall be determined in the manner

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1 provided by IC 6-8.1-15. If a CMRS provider receives a partial
2 payment for a monthly bill from a CMRS standard ~~subscriber~~, **user**, the
3 CMRS provider shall apply the payment against the amount the CMRS
4 standard ~~subscriber~~ **user** owes to the CMRS provider before applying
5 the payment against the fee.

6 ~~(2) A CMRS provider shall collect and remit to the board under~~
7 ~~section 36 of this chapter fees from its prepaid subscribers in a~~
8 ~~total amount equal to the fee amount multiplied by the number of~~
9 ~~active prepaid subscriber accounts on the last day of each~~
10 ~~calendar month.~~

11 **(c) This section does not apply to a prepaid user.**

12 SECTION 8. IC 36-8-16.5-31 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 31. A CMRS provider,
14 as part of its monthly billing process, may not pro-rate the monthly
15 wireless emergency enhanced 911 fee collected from ~~the subscriber~~: a
16 **standard user**.

17 SECTION 9. IC 36-8-16.5-32 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 32. A CMRS provider
19 is not required to take legal action to enforce the collection of the
20 wireless emergency enhanced 911 fee for which a ~~subscriber~~ **user** is
21 billed. However, a collection action may be initiated by the board. A
22 court finding for the board in the action may award reasonable costs
23 and attorney's fees associated with the collection action.

24 SECTION 10. IC 36-8-16.5-34 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 34. A CMRS number
26 is exempt from the wireless emergency enhanced 911 fee if the
27 ~~subscriber~~ **user** is any of the following:

- 28 (1) The federal government or an agency of the federal
29 government.
- 30 (2) The state or an agency or instrumentality of the state.
- 31 (3) A political subdivision (as defined in IC 36-1-2-13) or an
32 agency of a political subdivision.

33 SECTION 11. IC 36-8-16.5-35, AS AMENDED BY P.L.146-2005,
34 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2010]: Sec. 35. A CMRS provider may keep seven tenths of
36 a cent (\$0.007) of the wireless emergency enhanced 911 fee collected
37 each month from each ~~subscriber~~ **user** for the purpose of defraying the
38 administrative costs of collecting the fee.

39 SECTION 12. IC 36-8-16.5-39, AS AMENDED BY P.L.146-2005,
40 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2010]: Sec. 39. (a) Except as provided by section 26 of this
42 chapter and subsections (b) and (c), the fund must be managed in the

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following manner:

(1) Three cents (\$0.03) of the wireless emergency 911 fee collected from each **subscriber user** must be deposited in an escrow account to be used to reimburse:

(A) CMRS providers, PSAPs, and the board for costs associated with implementation of phase two (2) of the FCC order; and

(B) the board for costs associated with other wireless enhanced 911 services mandated by the FCC and specified in the FCC order but not incurred by CMRS providers or PSAPs.

A CMRS provider or a PSAP may recover costs under this chapter if the costs are incurred before July 1, 2005, and invoiced to the board not later than December 31, 2005. The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers and PSAPs under this subdivision.

(2) At least twenty-five cents (\$0.25) of the wireless emergency 911 fee collected from each **subscriber user** must be deposited in an escrow account and used to reimburse CMRS providers for the actual costs incurred by the CMRS providers before July 1, 2005, in complying with the wireless 911 requirements established by the FCC order and rules that are adopted by the FCC under the FCC order, including costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide service as well as the costs of operating the service. The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers under this subdivision. The CMRS provider may only request funds for true cost recovery. The board may increase the amount held in escrow under this subdivision not more than one (1) time a calendar year. If the board adjusts the wireless emergency 911 fee under section 26(a) of this chapter within a calendar year, an adjustment to the amount held in escrow under this subdivision for the calendar year must be made at that time.

(3) Two percent (2%) of the wireless emergency 911 fee collected from each **subscriber user** may be used by the board to recover the board's expenses in administering this chapter. However, the board may increase this percentage at the time the board may adjust the monthly fee assessed against each **subscriber user** to allow for full recovery of administration expenses.

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(4) The remainder of the wireless emergency 911 fee collected from each ~~subscriber~~ **user** must be distributed in the following manner:

(A) The board shall distribute on a monthly basis to each county containing one (1) or more eligible PSAPs, as identified by the county in the notice required under section 40 of this chapter, a part of the remainder based upon the county's percentage of the state's population (as reported in the most recent official United States census). A county must use a distribution received under this clause to make distributions to PSAPs that:

(i) are identified by the county under section 40 of this chapter as eligible for distributions; and

(ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(B) The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed in equal shares between the escrow accounts established under subdivisions (1) and (2).

(b) Notwithstanding the requirements described in subsection (a), the board may transfer money between and among the accounts in subsection (a) in accordance with the following procedures:

(1) For purposes of acting under this subsection, the board must have a quorum consisting of at least one (1) member appointed under section 18(c)(2) of this chapter and at least one (1) member appointed under section 18(c)(3) of this chapter.

(2) A transfer under this subsection must be approved by the affirmative vote of:

(A) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(2) of this chapter; and

(B) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(3) of this chapter.

(3) The board may make transfers only one (1) time during a calendar year.

(4) The board may not make a transfer that:

(A) impairs cost recovery by CMRS providers or PSAPs; or

(B) impairs the ability of the board to fulfill its management and administrative obligations described in this chapter.

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1 (c) If all CMRS providers have been reimbursed for their costs
 2 under this chapter, and the fee has been reduced under section 26(c) of
 3 this chapter, the board shall manage the fund in the following manner:
 4 (1) One cent (\$0.01) of the wireless emergency 911 fee collected
 5 from each **subscriber user** may be used by the board to recover
 6 the board's expenses in administering this chapter. However, the
 7 board may increase this amount at the time the board may adjust
 8 the monthly fee assessed against each **subscriber user** to allow for
 9 full recovery of administration expenses.
 10 (2) Thirty-eight and three tenths cents (\$0.383) of the wireless
 11 emergency 911 fee collected from each **subscriber user** must be
 12 distributed to each county containing at least one (1) PSAP, as
 13 identified in the county notice required by section 40 of this
 14 chapter. The board shall make these distributions in the following
 15 manner:
 16 (A) The board shall distribute on a monthly basis to each
 17 eligible county thirty-four and four tenths cents (\$0.344) of the
 18 wireless emergency 911 fee based upon the county's
 19 percentage of the state's population.
 20 (B) The board shall distribute on a monthly basis to each
 21 eligible county three and nine tenths cents (\$0.039) of the
 22 wireless emergency 911 fee equally among the eligible
 23 counties. A county must use a distribution received under this
 24 clause to reimburse PSAPs that:
 25 (i) are identified by the county under section 40 of this
 26 chapter as eligible for distributions; and
 27 (ii) accept wireless enhanced 911 service;
 28 for actual costs incurred by the PSAPs in complying with the
 29 wireless enhanced 911 requirements established by the FCC
 30 order and rules.
 31 (C) The board shall deposit the remainder of the wireless
 32 emergency 911 fee collected from each **subscriber user** into an
 33 escrow account to be used for costs associated with other
 34 wireless enhanced 911 services mandated by the FCC and
 35 specified in the FCC order but not incurred by PSAPs. The
 36 board may invest money in the account in the manner
 37 prescribed by section 23 of this chapter and may use the
 38 proceeds of the investments for costs associated with other
 39 wireless enhanced 911 services mandated by the FCC but not
 40 specified in the FCC order or to make distributions to PSAPs
 41 under this section.
 42 (3) If the fee has been reduced under section 26(c) of this chapter,

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1 the board shall determine how money remaining in the accounts
2 or money for uses described in subsection (a) is to be allocated
3 into the accounts described in this subsection or used for
4 distributions under this subsection.

5 This subsection does not affect the transfer provisions set forth in
6 subsection (b).

7 SECTION 13. IC 36-8-16.5-45 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 45. (a) All proprietary
9 information submitted to the board or the treasurer of state is
10 confidential. Notwithstanding any other law, proprietary information
11 submitted under this chapter is not subject to subpoena, and proprietary
12 information submitted under this chapter may not be released to a
13 person other than to the submitting CMRS provider without the
14 permission of the submitting CMRS provider.

15 (b) General information collected by the board or the treasurer of
16 state may be released or published only in aggregate amounts that do
17 not identify or allow identification of numbers of ~~subscribers~~ users or
18 revenues attributable to an individual CMRS provider.

19 SECTION 14. IC 36-8-16.6 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2010]:

22 **Chapter 16.6. Enhanced Prepaid Wireless Telecommunications**
23 **Service Charge**

24 **Sec. 1. As used in this chapter, "board" refers to the wireless**
25 **enhanced 911 advisory board established by IC 36-8-16.5-18.**

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

29 **Sec. 3. As used in this chapter, "enhanced prepaid wireless**
30 **charge" means the charge that a seller is required to collect from**
31 **a consumer under section 11 of this chapter.**

32 **Sec. 4. As used in this chapter, "fund" refers to the wireless**
33 **emergency telephone system fund established by**
34 **IC 36-8-16.5-21(a).**

35 **Sec. 5. As used in this chapter, "prepaid user" refers to a user**
36 **of prepaid wireless telecommunications service who:**

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

42 **Sec. 6. As used in this chapter, "prepaid wireless**

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1 telecommunications service" means a prepaid wireless calling
 2 service (as defined in IC 6-2.5-1-22.4) that allows a user of the
 3 service to reach emergency services by dialing the digits nine (9)
 4 one (1) one (1).

5 Sec. 7. As used in this chapter, "provider" means a person or
 6 entity that offers prepaid wireless telecommunications service.

7 Sec. 8. As used in this chapter, "retail transaction" means the
 8 purchase of prepaid wireless telecommunications service from a
 9 seller for any purpose other than resale.

10 Sec. 9. As used in this chapter, "seller" means a person that sells
 11 prepaid wireless telecommunications service to another person.

12 Sec. 10. (a) The board shall impose an enhanced prepaid
 13 wireless charge on each retail transaction that occurs after June
 14 30, 2010. The amount of the initial charge imposed under this
 15 subsection may not exceed one-half (1/2) of the monthly wireless
 16 emergency enhanced 911 fee assessed under IC 36-8-25.5.

17 (b) Subject to legislative approval, the board may increase the
 18 enhanced prepaid wireless charge to ensure adequate revenue for
 19 the board to fulfill its duties and obligations under this chapter,
 20 IC 36-8-16, and IC 36-8-16.5.

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

24 Sec. 11. (a) A seller shall collect the enhanced prepaid wireless
 25 charge from the consumer with respect to each retail transaction.

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

31 (c) Subject to section 14 of this chapter, a seller shall remit
 32 enhanced prepaid wireless charges to the board at the time and in
 33 the manner prescribed by the board.

34 Sec. 12. The enhanced prepaid wireless charge is the liability of
 35 the consumer and not of the seller or a provider. However, a seller
 36 is liable to remit to the board all enhanced prepaid wireless
 37 charges that the seller collects from consumers under section 11 of
 38 this chapter, including all charges that the seller is considered to
 39 collect where the amount of the charge has not been separately
 40 stated on an invoice, receipt, or other similar document provided
 41 to the consumer by the seller.

42 Sec. 13. The amount of the enhanced prepaid wireless charge

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1 that is collected by a seller from a consumer, whether or not
2 separately stated on an invoice, receipt, or other similar document
3 provided to the consumer by the seller, may not be included in the
4 base for determining a tax, fee, surcharge, or other charge that is
5 imposed by the state, a political subdivision, or any other
6 governmental agency.

7 **Sec. 14.** A seller may deduct and retain one percent (1%) of
8 enhanced prepaid wireless charges that the seller collects from
9 consumers to reimburse the direct costs incurred by the seller in
10 collecting and remitting enhanced prepaid wireless charges.

11 **Sec. 15. (a)** A seller is subject to the same audit and appeal
12 procedures with respect to the collection and remittance of
13 enhanced prepaid wireless charges as with collection and
14 remittance of the state gross retail tax under IC 6-2.5.

15 **(b)** An audit under subsection (a) must be conducted jointly by
16 the department of state revenue and the board.

17 **Sec. 16. (a)** The board, in conjunction and coordination with the
18 department of state revenue, shall establish procedures:

19 (1) governing the collection and remittance of enhanced
20 prepaid wireless charges in accordance with the procedures
21 established under IC 6-2.5 concerning the collection and
22 remittance of the state gross retail tax; and

23 (2) allowing a seller to document that a sale of prepaid
24 wireless telecommunications service is not a retail transaction.

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

26 (1) must take into consideration the differences between large
27 and small sellers, including smaller sales volumes; and

28 (2) may establish lower thresholds for the remittance of
29 enhanced prepaid wireless charges by small sellers.

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

33 **Sec. 17.** The board shall deposit all remitted enhanced prepaid
34 wireless charges in the fund. The board shall administer money
35 deposited in the fund under this subsection in the same manner as
36 wireless emergency enhanced 911 fees assessed under
37 IC 36-8-16.5-25.5.

38 **Sec. 18.** A seller of prepaid wireless telecommunications service
39 is not liable for damages to a person resulting from or incurred in
40 connection with the following:

41 (1) Providing or failing to provide 911 or wireless 911
42 services.

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- 1 **(2) Identifying or failing to identify the telephone number,**
- 2 **address, location, or name associated with a person or device**
- 3 **that accesses or attempts to access 911 or wireless 911 service.**
- 4 **(3) Providing lawful assistance to an investigative or law**
- 5 **enforcement officer of the United States, a state, or a political**
- 6 **subdivision of a state in connection with a lawful investigation**
- 7 **or other law enforcement activity by the law enforcement**
- 8 **officer.**

9 **Sec. 19. (a) An additional fee relating to the provision of wireless**
 10 **911 service with respect to prepaid wireless telecommunications**
 11 **service may not be levied by a state agency or local unit of**
 12 **government.**

13 **(b) The enhanced prepaid wireless charge imposed by section 11**
 14 **of this chapter is not considered an additional charge relating to**
 15 **the provision of wireless 911 service for purposes of**
 16 **IC 36-8-16.5-29.**

17 **Sec. 20. The following are not required to take legal action to**
 18 **enforce the collection of an enhanced wireless 911 charge that is**
 19 **imposed on a consumer:**

- 20 **(1) A provider.**
- 21 **(2) A seller.**

22 **However, the board may initiate a collection action. A court**
 23 **finding for the board in the action may award reasonable costs and**
 24 **attorney's fees associated with the collection action.**

25 **SECTION 15. IC 36-8-16.5-14 IS REPEALED [EFFECTIVE JULY**
 26 **1, 2010].**

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COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 302, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 302 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 302 be amended to read as follows:

Page 9, delete lines 17 through 20, begin a new paragraph and insert:

"Sec. 16. (a) The board, in conjunction and coordination with the department of state revenue, shall establish procedures:

- (1) governing the collection and remittance of enhanced prepaid wireless charges in accordance with the procedures established under IC 6-2.5 concerning the collection and remittance of the state gross retail tax; 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."

(Reference is to SB 302 as January 29, 2010.)

HERSHMAN

