

5990--A

2013-2014 Regular Sessions

I N   S E N A T E

November 22, 2013

---

Introduced by Sens. SEWARD, BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law, in relation to wireless surcharges in Delaware county

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The county law is amended by adding a new section 308-y to  
2     read as follows:  
3     S 308-Y. ESTABLISHMENT OF COUNTY OF DELAWARE WIRELESS SURCHARGE.     1.  
4     NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, THE COUNTY OF  
5     DELAWARE, ACTING THROUGH ITS LOCAL COUNTY LEGISLATIVE BODY, IS HEREBY  
6     AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL LOCAL LAWS TO IMPOSE  
7     A SURCHARGE IN AN AMOUNT NOT TO EXCEED THIRTY CENTS PER MONTH ON WIRE-  
8     LESS COMMUNICATIONS SERVICE IN DELAWARE COUNTY. THE SURCHARGE SHALL BE  
9     IMPOSED ON EACH WIRELESS COMMUNICATIONS DEVICE AND SHALL BE REFLECTED  
10    AND MADE PAYABLE ON BILLS RENDERED FOR WIRELESS COMMUNICATIONS SERVICE  
11    THAT IS PROVIDED TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS WITHIN THE  
12    COUNTY. FOR PURPOSES OF THIS SECTION, THE TERM "PLACE OF PRIMARY USE"  
13    SHALL MEAN THE STREET ADDRESS THAT IS REPRESENTATIVE OF WHERE THE  
14    CUSTOMER'S USE OF THE WIRELESS COMMUNICATIONS SERVICE PRIMARILY OCCURS,  
15    WHICH ADDRESS MUST BE: (A) THE RESIDENTIAL STREET ADDRESS OR THE PRIMARY  
16    BUSINESS STREET ADDRESS OF THE CUSTOMER; AND (B) WITHIN THE LICENSED  
17    SERVICE AREA OF THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER.  
18    2. ANY LOCAL LAW ADOPTED PURSUANT TO THIS SECTION SHALL STATE THE  
19    AMOUNT OF THE SURCHARGE AND THE DATE ON WHICH THE WIRELESS COMMUNI-  
20    CATIONS SERVICE SUPPLIER SHALL BEGIN TO ADD SUCH SURCHARGE TO THE BILL-  
21    INGS OF ITS CUSTOMERS. ANY WIRELESS COMMUNICATIONS SERVICE SUPPLIER  
22    WITHIN DELAWARE COUNTY WHICH HAS IMPOSED A SURCHARGE PURSUANT TO THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD11949-03-4

PROVISIONS OF THIS SECTION SHALL BE GIVEN A MINIMUM OF FORTY-FIVE DAYS WRITTEN NOTICE PRIOR TO THE DATE IT SHALL BEGIN TO ADD SUCH SURCHARGE TO THE BILLINGS OF ITS CUSTOMERS OR PRIOR TO ANY MODIFICATION TO OR CHANGE IN THE SURCHARGE AMOUNT.

3. (A) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SERVING DELAWARE COUNTY SHALL ACT AS COLLECTION AGENT FOR THE COUNTY AND SHALL REMIT THE FUNDS COLLECTED PURSUANT TO A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION TO THE CHIEF FISCAL OFFICER OF DELAWARE COUNTY EVERY MONTH. SUCH FUNDS SHALL BE REMITTED NO LATER THAN THIRTY DAYS AFTER THE LAST BUSINESS DAY OF THE MONTH.

(B) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ENTITLED TO RETAIN, AS AN ADMINISTRATIVE FEE, AN AMOUNT EQUAL TO TWO PERCENT OF ITS COLLECTIONS OF A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION.

(C) ANY SURCHARGE REQUIRED TO BE COLLECTED BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ADDED TO AND STATED SEPARATELY IN ITS BILLINGS TO CUSTOMERS.

(D) EACH WIRELESS COMMUNICATIONS SERVICE CUSTOMER WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL BE LIABLE TO DELAWARE COUNTY FOR THE SURCHARGE UNTIL IT HAS BEEN PAID TO DELAWARE COUNTY EXCEPT THAT PAYMENT TO A WIRELESS COMMUNICATIONS SERVICE SUPPLIER IS SUFFICIENT TO RELIEVE THE CUSTOMER FROM FURTHER LIABILITY FOR SUCH SURCHARGE.

(E) NO WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL HAVE A LEGAL OBLIGATION TO ENFORCE THE COLLECTION OF ANY SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION, PROVIDED, HOWEVER, THAT WHENEVER THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER REMITS THE FUNDS COLLECTED TO DELAWARE COUNTY, IT SHALL ALSO PROVIDE DELAWARE COUNTY WITH THE NAME AND ADDRESS OF ANY CUSTOMER REFUSING OR FAILING TO PAY A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION AND SHALL STATE THE AMOUNT OF SUCH SURCHARGE REMAINING UNPAID.

(F) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL ANNUALLY PROVIDE TO DELAWARE COUNTY AN ACCOUNTING OF THE SURCHARGE AMOUNTS BILLED AND COLLECTED.

4. ALL SURCHARGE MONIES REMITTED TO DELAWARE COUNTY BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE EXPENDED ONLY UPON AUTHORIZATION OF THE LOCAL COUNTY LEGISLATIVE BODY AND ONLY FOR PAYMENT OF ELIGIBLE WIRELESS 911 SERVICE COSTS AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION THREE HUNDRED TWENTY-FIVE OF THIS CHAPTER. THE COUNTY OF DELAWARE SHALL SEPARATELY ACCOUNT FOR AND KEEP ADEQUATE BOOKS AND RECORDS OF THE AMOUNT AND SOURCE OF ALL SUCH MONIES AND OF THE AMOUNT AND OBJECT OR PURPOSE OF ALL EXPENDITURES THEREOF. IF, AT THE END OF ANY FISCAL YEAR, THE TOTAL AMOUNT OF ALL SUCH MONIES EXCEEDS THE AMOUNT NECESSARY FOR PAYMENT OF THE ABOVE MENTIONED COSTS IN SUCH FISCAL YEAR, SUCH EXCESS SHALL BE RESERVED AND CARRIED OVER FOR THE PAYMENT OF THOSE COSTS IN THE FOLLOWING FISCAL YEAR.

S 2. This act shall take effect immediately; provided, however, that the provisions of subdivision 1 of section 308-y of the county law, as added by section one of this act shall apply to bills rendered to wireless communications service customers by a wireless communications service supplier on and after the expiration of the notice period required pursuant to the provisions of subdivision 2 of such section 308-y; provided further, that a wireless communications service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on the effective date of the local law imposing such surcharge, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or

1 renewal of such service contract or agreement, for purposes of determin-  
2 ing the taxing jurisdiction with respect to taxes on wireless communi-  
3 cations service.