

S T A T E O F N E W Y O R K

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.

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

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

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

14 (C) ANY SURCHARGE REQUIRED TO BE COLLECTED BY A WIRELESS COMMUNI-
15 CATIONS SERVICE SUPPLIER SHALL BE ADDED TO AND STATED SEPARATELY IN ITS
16 BILLINGS TO CUSTOMERS.

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

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

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

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

45 S 2. This act shall take effect immediately; provided, however, that
46 the provisions of subdivision 1 of section 308-y of the county law, as
47 added by section one of this act shall apply to bills rendered to wire-
48 less communications service customers by a wireless communications
49 service supplier on and after the expiration of the notice period
50 required pursuant to the provisions of subdivision 2 of such section
51 308-y; provided further, that a wireless communications service supplier
52 may treat the address used by such supplier for any wireless communi-
53 cations customer under a service contract or agreement in effect on the
54 effective date of the local law imposing such surcharge, as that wire-
55 less communications customer's place of primary use for the remaining
56 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.