

TESTIMONY  
OF  
PAUL K. FERREIRA,  
STATE OF HAWAII, ENHANCED 911 BOARD  
TO THE  
HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION & COMMERCE  
ON  
MARCH 23, 2015  
2:45 P.M.  
STATE CAPITOL, CONFERENCE ROOM 325

**IN SUPPORT  
OF  
SENATE BILL 193, S.D. 2, H.D. 1  
RELATING TO ENHANCED 911 SURCHARGES**

Chair McKelvey, Vice Chair Woodson, and members of the committee, thank you for the opportunity to testify on SB 193, SD 2, HD 1.

The Enhanced 911 Board (Board) supports SB 193, SD 2, HD 1, that seeks to collect the 911 surcharge from prepaid wireless consumers at the retail point of sale.

The collection on prepaid wireless 911 surcharge is very important in order to sustain adequate funding for enhanced 911 statewide. Our testimony is provided today on behalf of the thirteen-member Enhanced 911 Board that is comprised of representatives from each of the Public Safety Answering Points (PSAPs), representatives of the communications service providers, the public utility, and representatives from State agencies.

911 surcharges should be imposed in a fair and equitable manner with respect to prepaid mobile service like the 911 surcharge is collected today for postpaid wireless. The 911 surcharge should be imposed upon all consumers of telecommunication services that have the ability to access 911. This is an important funding mechanism to assist state and local governments in sustaining 911 systems and to provide for the deployment of new and emerging technologies. Prepaid wireless telecommunications services are an important segment of the telecommunications industry and have grown in use by consumers; however, today prepaid wireless consumers are exempt from the surcharge and yet have always had access to 911.

Today consumers of prepaid wireless are being subsidized by postpaid consumers who pay a monthly 911 surcharge. To be fair and equitable, prepaid wireless consumers should not be exempt from the 66 cent 911 surcharge and therefore should pay a 66 cents 911 surcharge per transaction at the point of sale.

The telecommunications industry association estimates prepaid wireless consumers represent approximately 20% of the consumer market in Hawaii. All states have experienced

Testimony of Paul K. Ferreira, State Of Hawai'i, Enhanced 911 Board  
House Committee on Consumer Protection and Commerce  
March 23, 2015  
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tremendous growth of prepaid which is why 36 states have now adopted legislation to collect a 911 surcharge from prepaid wireless consumers. The prepaid business model rather than postpaid contracts is the trend for the wireless industry today. While in the beginning prepaid was a good option for low income consumers, these are not the only consumers opting for prepaid rather than a contract today. Commercial ads by the carriers have made it evident that the prepaid consumer is a broad market in the competitive market of the wireless industry. Contracts will likely be non-existent in the near future. Without the collection of the 911 surcharge on prepaid wireless the State of Hawaii will be facing reductions in revenue to support our 911 system.

Wireless Enhanced 911 was established by the State of Hawaii in 2004. The 911 surcharge has to date been funded in the postpaid model. The 911 surcharge is service connections that are purchased by consumers at retail on a "pay as you go" basis with no contracts or monthly bills.

Given consumers of prepaid wireless are "pay as you go" a one-time fee for prepaid is not fair and equitable. What is fair and equitable would be to collect the 911 surcharge of 66 cents per transaction at the point of sale. This 911 surcharge would be collected at each sale at the time of purchase directly from the consumer. The surcharge on prepaid, like postpaid, would be remitted to the special fund established for enhanced 911 outside the State Treasury known as the Enhanced 911 fund that is administered by the Enhanced 911 Board. Moneys in the fund are expended exclusively by the Board for the purposes of ensuring adequate funding to deploy and sustain enhanced 911 services statewide.

The benefit to the public is a comprehensive, efficient, and coordinated statewide 911 systems serving all citizens that are funded in a fair and equitable manner for all.

For these reasons, we urge the committees to support our amendments that we have provided with this testimony. Thank you for this opportunity to testify on this important matter.

Sincerely,



PAUL K. FERREIRA  
LEGISLATIVE COMMITTEE CHAIR  
ENHANCED 911 BOARD

March 23<sup>rd</sup>, 2015

Honorable Angus L.K. McKelvey  
Chair, House Consumer Protection and Commerce Committee  
Hawaii State Capitol  
Room 320  
Honolulu, HI 96813

Honorable Justin H. Woodson  
Vice Chair, House Consumer Protection and Commerce Committee  
Hawaii State Capitol  
Room 304  
Honolulu, HI 96813

**RE: Senate Bill 193 SD2, HD1: 9-1-1 Prepaid Surcharge – Support with Amendments**

Dear Chair McKelvey and Vice Chair Woodson:

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I am writing to express our support for Senate Bill 193 SD2, HD1, with amendments, related to the imposition of the 9-1-1 surcharge on prepaid wireless services.

CTIA and the wireless industry are strong supporters of the public safety community and also believe a fully-funded and efficient 9-1-1 system is in the best interest of the people of Hawaii. With the proliferation of 9-1-1 calls made from wireless devices, it is that much more imperative that those who benefit from access to the 9-1-1 system are also contributors. As such, CTIA supports the public policy that prepaid wireless consumers should be paying a 9-1-1 surcharge.

Due to the unique business model of prepaid wireless services, where the majority of transactions occur at national ‘big box’ stores and other general retailers, the only way to accurately capture the 9-1-1 surcharge is to collect the surcharge at the point-of-sale at the time of the retail transaction. The wireless industry believes that model legislation endorsed by the National Conference of State Legislatures (NCSL) in 2009 is the appropriate method in which to accurately capture this surcharge. This legislation has been adopted in 36 states and the District of Columbia.

CTIA does support the policy espoused by Senate Bill 193 SD2, HD1, but would respectfully suggest one amendment. We would request Senate Bill 193 SD2, HD1 be amended to require the remittance of the 9-1-1 surcharge to the Department of Taxation. As amended, Senate Bill 193 SD2, HD1 would require the 9-1-1 surcharge to be remitted to the 9-1-1 Board. We would respectfully request the 9-1-1 surcharge be remitted to the Department of Taxation, the state agency that is familiar with administering other taxes and fees in Hawaii. Furthermore, this would streamline the remittance process for retailers who are already submitting Hawaii excise tax to the Department of Taxation. Requiring retailers to remit to two separate agencies creates administrative complexity and burdens. Furthermore, designating the Department of Taxation for



9-1-1 surcharge remittance is consistent with the NCSL model-endorsed legislation that 36 states and the District of Columbia have adopted.

Thank you for the opportunity to submit testimony in favor of Senate Bill 193 SD2, HD1, with amendments.

Sincerely,



Bethanne Cooley  
Director, State Legislative Affairs  
CTIA-The Wireless Association ®



John R. Cmelak  
Vice President  
State Tax Policy-West Area



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March 23, 2015

Honorable Angus L.K. McKelvey  
Chair, House Consumer Protection and Commerce Committee  
Hawaii State Capitol  
Room 320  
Honolulu, HI 96813

Honorable Justin H. Woodson  
Vice Chair, House Consumer Protection and Commerce Committee  
Hawaii State Capitol  
Room 304  
Honolulu, HI 96813

**RE: Senate Bill 193 SD2, HD1: 9-1-1 Prepaid Surcharge – Support**

Dear Chair McKelvey and Vice Chair Woodson:

Verizon supports SB 193 SD2 HD1, legislation relating to the imposition of Hawaii's 9-1-1 surcharge on prepaid wireless services.

This bill captures all the key components of the NCSL model bill. SB 193 SD2 HD1 is legislation similar to that which has already been adopted in 35 states, the District of Columbia and the Virgin Islands. It is the most appropriate method by which to accurately impose Hawaii's 9-1-1 surcharge on prepaid wireless services.

Verizon is a strong supporter of the public safety community and believes that an efficient and fair 9-1-1 system is in the best interest of the People of Hawaii.

Concerning implementation of this legislation, we recommend an effective date of January 1, 2017 to allow time for carriers and retailers to set up systems for 9-1-1 surcharge collection and remittance.

Verizon appreciates the opportunity to support SB 193 SD2 HD1.

Respectfully submitted,

A handwritten signature in blue ink that reads "John R. Cmelak".



**Executive Officers:**  
John Schilf, RSM Hawaii - Chairperson  
Derek Kurisu, KTA Superstores - Vice Chair  
Lisa DeCoito, Aloha Petroleum - Treasurer  
John Erickson, Frito-Lay - Secretary  
Lauren Zirbel, Executive Director

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Telephone : 808-533-1292**

**TO:**  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Angus L.K. McKelvey, Chair  
Representative Justin H. Woodson, Vice Chair

**FROM: HAWAII FOOD INDUSTRY ASSOCIATION**  
Lauren Zirbel, Executive Director

**DATE:** March 23, 2015  
**TIME:** 2:45pm  
**PLACE:** Conference Room 325

**RE: SB193 SD2 HD1**

**Position: Oppose**

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Here in Hawaii our businesses and our customers already pay several costly taxes and fees that are not only a financial burden, but an administrative burden as well. The state's system is complex and hard to navigate and adding an additional surcharge creates unnecessary added cost for retailers and consumers.

We appreciate that the bill allots 3% of the fee to the retailer and has clarified some other aspects of this program. However, we believe that given the importance of 911 to all residents, and visitors, this program is precisely the type of thing that should be covered by an appropriation from the General Fund.

For these reasons we ask that this bill be held.

Thank you for the opportunity to testify.

**ORIGINAL**



**LATE TESTIMONY**

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

MONDAY, MARCH 23, 2015  
2:45 p.m.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 193, S.D. 2, H.D.1 - RELATING TO ENHANCED 911  
SURCHARGES

DESCRIPTION:

This measure proposes to establish an unspecified prepaid wireless E911 surcharge per retail transaction of prepaid wireless telecommunications service at the point of sale and allows sellers to deduct and retain 3 per cent of the surcharge that is collected. This measure also proposes to require the amounts collected by the enhanced 911 board to be placed in the enhanced 911 fund.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports this measure.

COMMENTS:

This bill would impose the E911 surcharge on prepaid wireless customers for each retail transaction of prepaid wireless telecommunications service at the point of sale. Prepaid wireless customers are currently exempt pursuant to Hawaii Revised Statutes Section 138-4(b)(2) from paying the E911 surcharge and yet prepaid wireless customers have always had access to the E911 system and its services. Under this exemption, prepaid wireless customers have been subsidized by the postpaid

Senate Bill No. 193, S.D. 2, H.D. 1  
House Committee on Consumer Protection & Commerce  
Monday, March 23, 2015  
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customers who pay the monthly E911 surcharge. Given the importance of the 911 system to all members of our community, the system should be funded in a fair and equitable manner and this bill will provide parity among all wireless customers. The Consumer Advocate supports the collection of the E911 surcharge from prepaid wireless customers.

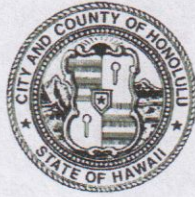
Thank you for this opportunity to testify.



POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU **LATE TESTIMONY**

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KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE SN-AS

March 23, 2015

The Honorable Angus L. K. McKelvey, Chair  
and Members  
Committee on Consumer Protection and Commerce  
House of Representatives  
Hawaii State Capitol, Room 325  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

SUBJECT: Senate Bill No. 193, SD2, HD1, Relating to Enhanced 911 Surcharges

I am Sean Naito, Major of the Communications Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 193, SD2, HD1, Relating to Enhanced 911 Surcharges, with the suggested amendment to set the unspecified prepaid wireless enhanced 911 surcharge at \$0.66.

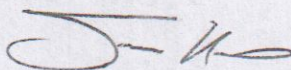
This bill provides fair and equitable contribution to the funding of the 911 system. Currently, prepaid wireless consumers are exempt from paying the \$0.66 surcharge but have the same access to the 911 system. The collection and payment obligation of charges to support the 911 system should be in parity with other wireless consumers.

The HPD urges you to support Senate Bill No. 193, SD2, HD1, with the suggested amendment.

The Honorable Angus L. K. McKelvey, Chair  
and Members  
Committee on Consumer Protection and Commerce  
March 23, 2015  
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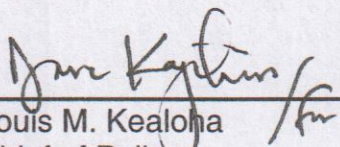
Thank you for the opportunity to testify.

Sincerely,



Sean Naito, Major  
Communications Division

APPROVED:



Louis M. Kealoha  
Chief of Police

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** MISCELLANEOUS, Impose enhanced 911 surcharge on prepaid phones

**BILL NUMBER:** SB 193, HD-1

## LATE TESTIMONY

**INTRODUCED BY:** House Committee on Public Safety

**BRIEF SUMMARY:** Adds a new section to HRS chapter 138 to provide that the enhanced 911 surcharge of \_\_\_ cents shall be imposed as a one-time charge on prepaid wireless telecommunications services. The surcharge shall be the liability of the consumer but collected by the seller. Allows the seller to retain 3% of the surcharge collected from consumers and remit the balance to the enhanced 911 board.

**EFFECTIVE DATE:** July 1, 2020

**STAFF COMMENTS:** The legislature by Act 159, SLH 1994, established a wireless enhanced 911 surcharge of 66 cents per month and a wireless enhanced 911 fund to allow deployment of phase 1 and phase 2 of the wireless enhanced 911 service and expenses of administering the fund. The wireless enhanced 911 program allows wireless phones to be located by public safety personnel in the event of an emergency. The fee is collected to reimburse facilities that provide Public Safety Answering Points (PSAP) which are set up to determine the location of a wireless 911 call for emergency services.

In Act 79, SLH 2009, the legislature determined that there was an excess \$16 million in the enhanced 911 fund. At the time, public safety officials complained that diversion of receipts in the fund could disqualify the state from participating in federal grant programs to enhance the technology of 911 systems. But the fund was raided anyway. It now may be a good time for lawmakers to investigate whether all the funding needs of the system have been made and if upgrades are still needed. Are there technologies still to be implemented to fully operate the system? Is the rate too high, bringing in revenues faster than they can be spent? If the latter is true, then lawmakers should consider reducing the rate so the monthly burden will not be as great on users.

Currently, wireless phones are assessed a surcharge of 66 cents per month while landline phones are assessed 27 cents per month. Prepaid service connections or prepaid pay as you go cell phones are exempt from this surcharge. Because prepaid phones also have access to enhanced 911 services, it appears equitable to assess those phones a fair rate as well.

One practical issue to examine is when prepaid phones are recharged with minutes purchased online. Section 237-13.8, HRS, which is referred to in this bill, appears to source such a transaction to Hawaii if the customer's billing address is in Hawaii. For a Hawaii customer, then, the recharge would be a retail transaction and the surcharge would apply. However, the communications company has neither presence nor property in Hawaii (they make the customers buy the phones), so constitutional nexus may be lacking. If the communications company doesn't pay GET, its customer is considered to be importing a service, so that Use Tax is payable. But there is nothing comparable to the Use Tax for this surcharge, so an out-of-state communications company may be able to get away without paying it and thus gain a competitive advantage.

We also suggest one technical amendment to subsection (e) to clarify that the 3% retained under subsection (d) is income to the seller and is not exempt:

(e) The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer (except for the amount retained under subsection (d)) shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the State, any political subdivision of the State, or any intergovernmental agency.

Digested 3/23/15