BILL REQ. #: S-2902.2/13 2nd draft

ATTY/TYPIST: JA:seg

BRIEF DESCRIPTION: Concerning state government.
AN ACT Relating to state government; amending RCW 82.14B.040, 82.14B.042, 82.14B.030, 82.14B.200, 80.36.430, 43.20A.725, 80.36.420, 80.36.450, 80.36.460, 80.36.470, and 80.36.610; reenacting and amending RCW 82.14B.020 and 82.08.0289; adding new sections to chapter 80.36 RCW; adding new sections to 2013 1st sp.s. c ... (ESSB 5034) (uncodified); creating new sections; repealing RCW 82.72.010, 82.72.020, 82.72.030, 82.72.040, 82.72.050, 82.72.060, 82.72.070, 82.72.080, 82.72.090, and 80.36.600; prescribing penalties; making appropriations; providing effective dates; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART I

Providing Communications Services Tax Reform

NEW SECTION. Sec. 101. (1) The legislature finds that:
(a) The communications industry is undergoing rapid change due to technological advances and deregulation. The legislature further finds that an industry that began with the telephone now includes cable, wireless, and satellite communications, as well as the internet;
(b) Washington's tax system has not kept pace with this industry;
(c) There are a vast array of state taxes and other charges on communications services in Washington that were established for a far different technological, legal, and structural landscape than what exists today;
(d) Many taxes and fees remain targeted to a specific technology (e.g., telephone taxes or cable franchise fees), despite the blurring of distinctions between technologies that provide similar services (e.g., the telephone and internet telephony); and
(e) The convergence of formerly distinct communications technologies renders the existing tax structure difficult to justify in terms of economic efficiency or equity.

(2) It is the legislature's intent to address the vast disparity in tax policy for communications services in an effort to minimize the existing inequity, inefficiency, and administrative complexity while preserving revenue sufficiency.

(3) With respect to section 107 of this act, the legislature further finds that:
(a) The department of revenue has consistently interpreted the phrase "a residential class of telephone service" as it would have been understood when the residential telephone service exemption was enacted in 1983;
(b) In 1983, all telephone service was divided into separate "local" and "toll" services for "residential" and "business" classifications, as defined by regulatory tariffs filed with the utilities and transportation commission. As a result, the department of revenue has consistently restricted the residential telephone service exemption in RCW 82.08.0289 to nontoll telephone service provided under a residential customer regulatory tariff. This includes traditional landline telephone service but excludes cellular telephone service and voice over internet protocol telephone services, which are not subject to regulatory tariffs;
(c) The department of revenue's interpretation of the residential telephone service exemption has been upheld by the board of tax appeals but was rejected by the Thurston county superior court in a 2011 decision; and
(d) Further litigation would be costly and could result in the unintended expansion of the exemption to all telephone services that a
carrier treats as residential, such as cellular and voice over internet protocol telephone services provided to nonbusiness customers, and to long-distance service provided to residential customers for a flat rate. This could result in extremely large and devastating revenue impacts for the state and local governments.

(4) The legislature intends section 107 of this act to clarify retroactively that, prior to this act, the residential telephone service exemption in RCW 82.08.0289 has always applied only to residential nontoll telephone service offered under a tariff filed with the utilities and transportation commission, consistent with the department of revenue's long-standing interpretation of the exemption.

Sec. 102. RCW 82.14B.020 and 2010 1st sp. s 2 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Consumer" means a person who purchases a prepaid wireless telecommunications service in a retail transaction.

(2) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(3) "Enhanced 911 emergency communications system" means a public communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 voice or data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 voice or data at the appropriate public safety answering point. "Enhanced 911 emergency communications system" includes the modernization to next generation 911 systems.

(4) "Interconnected voice over internet protocol service" has the same meaning as provided by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.
"Interconnected voice over internet protocol service line" means an interconnected voice over internet protocol service that offers an active telephone number or successor dialing protocol assigned by a voice over internet protocol provider to a voice over internet protocol service customer that has inbound and outbound calling capability, which can directly access a public safety answering point when such a voice over internet protocol service customer has a place of primary use in the state.

"Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

"Place of primary use" means the street address representative of where the subscriber's use of the radio access line or interconnected voice over internet protocol service line occurs, which must be:

(a) The residential street address or primary business street address of the subscriber; and
(b) In the case of radio access lines, within the licensed service area of the home service provider.

"Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

"Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

"Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service,
such as wireless roaming service, or to a private telecommunications system.

"Radio communications service company" has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

"Subscriber" means the retail purchaser of telecommunications service, a competitive telephone service, or interconnected voice over internet protocol service. "Subscriber" does not include a consumer, as defined in this section.

"Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

Sec. 103. RCW 82.14B.040 and 2010 1st sp.s. c 19 s 6 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section:

(a) The state enhanced 911 excise tax and the county enhanced 911 excise tax on switched access lines must be collected from the subscriber by the local exchange company providing the switched access line.

(b) The state enhanced 911 excise tax and the county enhanced 911 excise tax on radio access lines must be collected from the subscriber by the radio communications service company, including those companies that resell radio access lines, providing the radio access line to the subscriber, and the seller of prepaid wireless telecommunications service.

(c) The state and county enhanced 911 excise taxes on interconnected voice over internet protocol service lines must be collected from the subscriber by the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line to the subscriber.
The amount of the tax must be stated separately on the billing statement which is sent to the subscriber.

(2)(a) The state and county enhanced 911 excise taxes imposed by this chapter must be collected from the consumer by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state.

(b) The department must transfer all tax proceeds remitted by a seller under this subsection (2) as provided in RCW 82.14B.030 (2) and (6).

(c) The taxes required by this subsection to be collected by the seller must be separately stated in any sales invoice or instrument of sale provided to the consumer.

Sec. 104. RCW 82.14B.042 and 2010 1st sp.s. c 19 s 7 are each amended to read as follows:

(1)(a) The state and county enhanced 911 excise taxes imposed by this chapter must be paid by:

(i) The subscriber to the local exchange company providing the switched access line, the radio communications service company providing the radio access line, or the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line; or

(ii) The consumer to the seller of prepaid wireless telecommunications service.

(b) Each local exchange company, each radio communications service company, and each interconnected voice over internet protocol service company must collect from the subscriber, and each seller of prepaid wireless telecommunications service must collect from the consumer, the full amount of the taxes payable. The state and county enhanced 911 excise taxes required by this chapter to be collected by a company or seller, are deemed to be held in trust by the company or seller until paid to the department. Any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment
on the due date as prescribed in this chapter is guilty of a gross
misdemeanor.

(2) If any local exchange company, radio communications service
company, seller of prepaid wireless telecommunications service, or
interconnected voice over internet protocol service company fails to
collect the state or county enhanced 911 excise tax or, after
collecting the tax, fails to pay it to the department in the manner
prescribed by this chapter, whether such failure is the result of its
own act or the result of acts or conditions beyond its control, the
company or seller is personally liable to the state for the amount of
the tax, unless the company or seller has taken from the buyer in good
faith documentation, in a form and manner prescribed by the department,
stating that the buyer is not a subscriber or consumer or is otherwise
not liable for the state or county enhanced 911 excise tax.

(3) The amount of tax, until paid by the subscriber to the local
exchange company, the radio communications service company, the
interconnected voice over internet protocol service company, or to the
department, or until paid by the consumer to the seller of prepaid
wireless telecommunications service, or to the department, constitutes
a debt from the subscriber to the company, or from the consumer to the
seller. Any company or seller that fails or refuses to collect the tax
as required with intent to violate the provisions of this chapter or to
gain some advantage or benefit, either direct or indirect, and any
subscriber or consumer who refuses to pay any tax due under this
chapter is guilty of a misdemeanor. The state and county enhanced 911
excise taxes required by this chapter to be collected by the local
exchange company, radio communications service company, or
interconnected voice over internet protocol service company must be
stated separately on the billing statement that is sent to the
subscriber.

(4) If a subscriber has failed to pay to the local exchange
company, radio communications service company, or interconnected voice
over internet protocol service company, or a consumer has failed to pay
to the seller of prepaid wireless telecommunications service, the state
or county enhanced 911 excise taxes imposed by this chapter and the
company or seller has not paid the amount of the tax to the department,
the department may, in its discretion, proceed directly against the
subscriber or consumer for collection of the tax, in which case a
penalty of ten percent may be added to the amount of the tax for failure of the subscriber or consumer to pay the tax to the company or seller, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061.

Sec. 105.  RCW 82.14B.030 and 2010 1st sp.s. c 19 s 3 are each amended to read as follows:

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding seventy cents per month for each switched access line. The amount of tax must be uniform for each switched access line. Each county must provide notice of the tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.

(2)(a) The legislative authority of a county may also impose a county enhanced 911 excise tax on the use of radio access lines:
   (i) By subscribers whose place of primary use is located within the county in an amount not exceeding seventy cents per month for each radio access line. The amount of tax must be uniform for each radio access line under this subsection (2)(a)(i); and
   (ii) By consumers whose retail transaction occurs within the county in an amount not exceeding seventy cents per retail transaction. The amount of tax must be uniform for each retail transaction under this subsection (2)(a)(ii).

(b) The county must provide notice of the tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications services, on a tax return provided by the department. The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.
(3)(a) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of interconnected voice over internet protocol service lines in an amount not exceeding seventy cents per month for each interconnected voice over internet protocol service line. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network.

(b) The interconnected voice over internet protocol service company must use the place of primary use of the subscriber to determine which county's enhanced 911 excise tax applies to the service provided to the subscriber.

(c) The tax imposed under this section must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department.

(d) The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.

(e) To the extent that a local exchange carrier and an interconnected voice over internet protocol service company contractually jointly provide a single service line, only one service company is responsible for remitting the enhanced 911 excise taxes, and nothing in this section precludes service companies who jointly provide service from agreeing by contract which of them (shall) must remit the taxes collected.

(4) Counties imposing a county enhanced 911 excise tax must provide an annual update to the enhanced 911 coordinator detailing the proportion of their county enhanced 911 excise tax that is being spent on:

(a) Efforts to modernize their existing enhanced 911 communications system; and

(b) Enhanced 911 operational costs.

(5) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax may not exceed twenty-five cents per month for each switched access line. The tax must be uniform for each switched access line. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. Tax proceeds
must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(6)(a) A state enhanced 911 excise tax is imposed on the use of all radio access lines:

(i) By subscribers whose place of primary use is located within the state in an amount of twenty-five cents per month for each radio access line. The tax must be uniform for each radio access line under this subsection (6)(a)(i); and

(ii) By consumers whose retail transaction occurs within the state in an amount of twenty-five cents per retail transaction. The tax must be uniform for each retail transaction under this subsection (6)(a)(ii). Until July 1, 2018, a seller of prepaid wireless telecommunications service may charge an additional five cents per retail transaction as compensation for the cost of collecting and remitting the tax.

(b) The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications service, on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(7) For purposes of the state and county enhanced 911 excise taxes imposed by subsections (2) and (6) of this section, the retail transaction is deemed to occur at the location where the transaction is sourced to under RCW 82.32.520(3)(c).

(8) A state enhanced 911 excise tax is imposed on all interconnected voice over internet protocol service lines in the state. The amount of tax may not exceed twenty-five cents per month for each interconnected voice over internet protocol service line whose place of primary use is located in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection must be remitted to the department by interconnected voice over internet
protocol service companies on a tax return provided by the department.

Tax proceeds must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

((8)) (9) For calendar year 2011, the taxes imposed by subsections (5) and ((7)) (8) of this section must be set at their maximum rate. By August 31, 2011, and by August 31st of each year thereafter, the state enhanced 911 coordinator must recommend the level for the next year of the state enhanced 911 excise tax imposed by subsections (5) and ((7)) (8) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission must by the following October 31st determine the level of the state enhanced 911 excise taxes imposed by subsections (5) and ((7)) (8) of this section for the following year.

Sec. 106. RCW 82.14B.200 and 2010 1st sp.s. c 19 s 12 are each amended to read as follows:

(1) Unless a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax, the burden of proving that a sale of the use of a switched access line, radio access line, or interconnected voice over internet protocol service line was not a sale to a subscriber, consumer, or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company remains liable for the tax as provided in RCW 82.14B.042, unless the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company
can demonstrate facts and circumstances according to rules adopted by
the department that show the sale was properly made without payment of
the state or county enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on
state or county enhanced 911 excise taxes due but not paid as a result
of the improper use of documentation stating that the buyer is not a
subscriber or consumer or is otherwise not liable for the state or
county enhanced 911 excise tax. This subsection does not prohibit or
restrict the application of other penalties authorized by law.

**Sec. 107.** RCW 82.08.0289 and 2007 c 6 s 1006 and 2007 c 6 s 1005
are each reenacted and amended to read as follows:

(1) Until the effective date of this section, the tax levied by RCW
82.08.020 (shall) does not apply to sales of:

(a) Local service;

(b) Coin-operated telephone service; and

(c) Mobile telecommunications services, including any toll service,
provided to a customer whose place of primary use is outside this
state.

(2) The definitions in RCW 82.04.065, as well as the definitions in
this subsection, apply to this section.

(a) "Local service" means: (i) Ancillary services and
telecommunications service, as those terms are defined in RCW
82.04.065, other than toll service, provided to an individual
subscribing to a residential class of telephone service offered under
a tariff required to be filed with the Washington utilities and
transportation commission under Title 80 RCW; and (ii) fixed
interconnected voice over internet protocol service, other than the
nonlocal service allocation attributable to that service, sold by a
provider to an individual classified as residential by that provider.

(b) "Toll service" means long distance service regardless of the
method of billing for such service, but does not include customer
access line charges for access to a toll calling network.

(c) "Coin-operated telephone service" means a telecommunications
service paid for by inserting money into a telephone accepting direct
deposits of money to operate.

(d) "Fixed interconnected voice over internet protocol service"
means a service that meets the definition of interconnected voice over
internet protocol service in 47 C.F.R. Sec. 9.3 on January 1, 2009, and
that offers an active telephone number or successor dialing protocol
assigned by a provider; provides inbound and outbound calling
capability; and can be used for transmission of telephone calls only
from a fixed location.

(e) "Nonlocal service allocation" means the portion of the
provider's fixed interconnected voice over internet protocol service
attributable to the provider's nationwide nonlocal service activity as
determined using a method sanctioned by the federal communications
commission in FCC 06-94 and reported to the federal communications
commission for the same calendar quarter. If the provider does not
report any nonlocal service activity to the federal communications
commission, the full revenue derived from the fixed interconnected
voice over internet protocol service is deemed part of the nonlocal
service allocation.

(f) "Provider" means a provider of a fixed interconnected voice
over internet protocol service that is, or is affiliated with a person
that is, subject to a franchise fee in this state under the authority
of Title 47 U.S.C. Sec. 542(a). A provider is affiliated with a person
if the provider and the person have one hundred percent common
ownership.

Sec. 108. RCW 80.36.430 and 2011 1st sp.s. c 50 s 968 are each
amended to read as follows:

(1) The Washington telephone assistance program ((shall be)) is
funded by ((a telephone assistance excise tax on all switched access
lines)) the legislature by means of a biennial general fund
appropriation to the department and by funds from any federal
government or other programs for this purpose. ((Switched access lines
are defined in RCW 82.14B.020. The telephone assistance excise tax
shall be applied equally to all residential and business access lines
not to exceed fourteen cents per month. The department shall submit an
approved annual budget for the Washington telephone assistance program
to the department of revenue no later than March 1st prior to the
beginning of each fiscal year. The department of revenue shall then
determine the amount of telephone assistance excise tax to be placed on
each switched access line and shall inform local exchange companies and
the utilities and transportation commission of this amount no later
than May 1st. The department of revenue shall determine the amount of telephone assistance excise tax by dividing the total of the program budget funded by the telephone assistance excise tax, as submitted by the department, by the total number of switched access lines in the prior calendar year. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.)

(2) Local exchange companies (shall) must bill the (fund) department for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department (shall) must disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department (shall) must recover its administrative costs (from the fund). The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department (shall) must enter into an agreement with the department of commerce for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

((4) During the 2009-2011 and 2011-2013 biennia, the department shall enter into an agreement with the WIN 211 organization for operational support. During the 2011-2013 biennium, the department shall provide five hundred thousand dollars per fiscal year for this purpose.

(5) During the 2009-2011 biennium, the telephone assistance fund shall also be used in support of the economic services administration call centers and related operations.)

(4) The department shall enter into an agreement with the Washington information network 211 organization for operational support, subject to the availability of amounts appropriated for this purpose.
Sec. 109. RCW 43.20A.725 and 2011 1st sp.s. c 50 s 944 are each amended to read as follows:

(1) The department, through the sole authority of the office or its successor organization, must maintain a program whereby an individual of school age or older who possesses a hearing or speech impairment is provided with telecommunications equipment, software, and/or peripheral devices, digital or otherwise, that is determined by the office to be necessary for such a person to access and use telecommunications transmission services effectively.

(2) The department, through the sole authority of the office or its successor organization, must maintain a program where telecommunications relay services of a human or electronic nature will be provided to connect hearing impaired, deaf-blind, or speech impaired persons with persons who do not have a hearing or speech impairment. Such telecommunications relay services must provide the ability for an individual who has a hearing or speech impairment to engage in voice, tactile, or visual communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice or visual communication services by wire or radio subject to subsection (4)(b) of this section.

(3) The telecommunications relay service and equipment distribution program may operate in such a manner as to provide communications transmission opportunities that are capable of incorporating new technologies that have demonstrated benefits consistent with the intent of this chapter and are in the best interests of the citizens of this state.

(4) The office must administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services according to this section. The relay service contract must be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval. The relay system providers and
telecommunications equipment vendors (shall) must be selected on the basis of cost-effectiveness and utility to the greatest extent possible under the program and technical specifications established by the office.

(a) To the extent funds are available (under the then-current rate and not otherwise held in reserve or required for other) for the purposes authorized by this chapter, the office may award contracts for communications and related services and equipment for hearing impaired or speech impaired individuals accessing or receiving services provided by, or contracted for, the department to meet access obligations under Title 2 of the federal Americans with disabilities act or related federal regulations.

(b) The office (shall) must perform its duties under this section with the goal of achieving functional equivalency of access to and use of telecommunications services similar to the enjoyment of access to and use of such services experienced by an individual who does not have a hearing or speech impairment only to the extent that funds are available (under the then-current rate and not otherwise held in reserve or required for other) for the purposes authorized by this chapter.

(5) The program (shall) must be funded by (a telecommunications relay service (TRS) excise tax applied to each switched access line provided by the local exchange companies. The office shall determine, in consultation with the office's program advisory committee, the budget needed to fund the program on an annual basis, including both operational costs and a reasonable amount for capital improvements such as equipment upgrade and replacement. The budget proposed by the office, together with documentation and supporting materials, shall be submitted to the office of financial management for review and approval. The approved budget shall be given by the department in an annual budget to the department of revenue no later than March 1st prior to the beginning of the fiscal year. The department of revenue shall then determine the amount of telecommunications relay service excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telecommunications relay service excise tax to be collected in the following fiscal year by dividing the
total of the program budget, as submitted by the office, by the total number of switched access lines in the prior calendar year, as reported to the department of revenue under chapter 82.14B RCW, and shall not exercise any further oversight of the program under this subsection other than administering the collection of the telecommunications relay service excise tax as provided in RCW 82.72.010 through 82.72.090. The telecommunications relay service excise tax shall not exceed nineteen cents per month per access line. The telecommunications relay service excise tax shall be separately identified on each ratepayer's bill with the following statement: "Funds federal ADA requirement." All proceeds from the telecommunications relay service excise tax shall be put into a fund to be administered by the office through the department. During the 2009-2011 and 2011-2013 fiscal biennia, the funds may also be used to provide individualized employment services and employment-related counseling to people with disabilities, and technical assistance to employers about the employment of people with disabilities. "Switched access line" has the meaning provided in RCW 82.14B.020) the legislature by means of a biennial general fund appropriation to the department for the purposes of the program.

(6) The telecommunications relay service program and equipment vendors (shall) must provide services and equipment consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the hearing impaired or speech impaired. The department and the utilities and transportation commission (shall be) are responsible for ensuring compliance with federal requirements and (shall) must provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

(7) The department (shall) must adopt rules establishing eligibility criteria, ownership obligations, financial contributions, and a program for distribution to individuals requesting and receiving such telecommunications devices distributed by the office, and other rules necessary to administer programs and services consistent with this chapter.

NEW SECTION. Sec. 110. For services affected by the expiration of the exemption for local service under RCW 82.08.0289(1) that cover a billing period starting before and ending after the effective date of
section 107 of this act, RCW 82.08.064(3)(a) is deemed to apply, and retail sales tax will apply to the first billing period starting on or after the effective date of section 107 of this act.

NEW SECTION.  Sec. 111. Section 107 of this act applies prospectively as well as retroactively to tax periods open for assessment or refund of taxes under RCW 82.32.050 or 82.32.060, including any refund claims or disputed assessments pending before the department of revenue, board of tax appeals, or any court of law.

NEW SECTION.  Sec. 112. In accordance with Article VIII, section 5 of the state Constitution, section 107 of this act does not authorize refunds of sales tax validly collected before the effective date of this section on fixed interconnected voice over internet protocol service as defined in section 107 of this act.

NEW SECTION.  Sec. 113. The following acts or parts of acts are each repealed:

(1) RCW 82.72.010 (Definitions) and 2007 c 6 s 1010 & 2004 c 254 s 3;
(2) RCW 82.72.020 (Authorization to administer telephone program excise taxes) and 2004 c 254 s 4;
(3) RCW 82.72.030 (Collection of tax by local exchange company) and 2004 c 254 s 5;
(4) RCW 82.72.040 (Tax payment and collection requirements) and 2009 c 563 s 214 & 2004 c 254 s 6;
(5) RCW 82.72.050 (Administration of telephone program excise taxes) and 2004 c 254 s 7;
(6) RCW 82.72.060 (Tax returns) and 2004 c 254 s 8;
(7) RCW 82.72.070 (Liability for payment of taxes) and 2009 c 563 s 215 & 2004 c 254 s 9;
(8) RCW 82.72.080 (Liability for payment of taxes upon termination, dissolution, or abandonment of business) and 2004 c 254 s 10; and
(9) RCW 82.72.090 (Applicability of chapter 82.32 RCW) and 2004 c 254 s 11.

NEW SECTION.  Sec. 114. The repeals in section 113 of this act do not affect any existing right acquired or liability or obligation
incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they it affect any proceedings instituted under them.

Sec. 115. RCW 80.36.420 and 2003 c 134 s 3 are each amended to read as follows:

The Washington telephone assistance program (shall) may be available to participants of programs set forth in RCW 80.36.470. Within funds specifically appropriated by the legislature for the Washington telephone assistance program, assistance (shall) may consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.
(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.
(3) A discounted flat rate service for local exchange service, which (shall) is subject to the following conditions:
   (a) The commission (shall) must establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate (shall) must include any federal end user charges and any other charges necessary to obtain local exchange service.
   (b) The commission (shall) must, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.
   (c) The telephone assistance rate (shall) is only (be) available to eligible customers subscribing to the lowest priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate.
   (d) The cost of providing the service (shall) must be paid, to the maximum extent possible, by a waiver of all or part of federal end user charges and, to the extent necessary, from the (telephone assistance fund created by RCW 80.36.430) available appropriated funds.
(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages.

Sec. 116. RCW 80.36.450 and 2003 c 134 s 6 are each amended to read as follows:

Within funds specifically appropriated by the legislature for the Washington telephone assistance program, the Washington telephone assistance program (shall) must limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person.

Sec. 117. RCW 80.36.460 and 2003 c 134 s 7 are each amended to read as follows:

Local exchange companies (shall) must waive deposits on local exchange service for eligible subscribers and provide a fifty percent discount on the company's customary charge for commencing telecommunications service for eligible subscribers. (Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose.)

The commission or other appropriate agency (shall) must make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber (shall) must be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount (shall) must be accounted for separately and recovered from the telephone assistance (fund) appropriation.

Sec. 118. RCW 80.36.470 and 2003 c 134 s 8 are each amended to read as follows:

(1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department (shall) must notify the participants of their eligibility.
(2) Participants in community service voice mail programs are eligible for participation in services available under RCW 80.36.420 (1), (2), and (3) after completing use of community service voice mail services. Eligibility (shall) must be for a period including the remainder of the current service year and the following service year. Community agencies (shall) must notify the department of participants eligible under this subsection.

(3) Enrollment in the Washington telephone assistance program may not result in expenditures that exceed the total amount of funds made available by the legislature for the Washington telephone assistance program. When the department finds that there is a danger of an overexpenditure of appropriated funds, the department must close the Washington telephone assistance program enrollment until the department finds the danger no longer exists.

PART II

Establishing a Temporary Universal Communications Services Program

NEW SECTION. Sec. 201. (1) The legislature finds that:

(a) The benefit that all consumers and communications providers derive from connection to the legacy public telephone network is enhanced by a universal service program that enables as many consumers to be connected to the public network as possible; and

(b) Consumers in all areas of the state should continue to have access to communications services at reasonable rates.

(2) The state has long relied on incumbent local exchange carriers to provide a ubiquitous incumbent public network as carriers of last resort. Significant changes are occurring in the communications marketplace, including: (a) The migration from customer reliance on access lines for voice service to the use of broadband for a number of communications applications; and (b) changes in federal regulations governing: How communications providers compensate other providers for the use of the network; and eligibility for federal universal service funds. These changes are adversely affecting the ability of some communications providers to continue to offer communications services in rural areas of the state of Washington at rates that are comparable to those prevailing in urban areas. These changes, absent explicit federal and state universal service support for such communications
providers, may lead, in the short term, to unreasonable telephone
service rate increases or cessation of service for some Washington
consumers. Therefore, it is in the best interest of the state to
ensure that incumbent local exchange carriers are able to continue to
provide services as the carrier of last resort.

(3) As a result of the foregoing and to enable all consumers in
Washington to access and benefit from a ubiquitous public network, the
legislature intends to create a targeted and temporary universal
service program that supports the legacy public telephone network of
Washington's smaller incumbent communications providers and ensures
access to the network during this transition to broadband services, is
operated in a transparent manner pursuant to rules adopted by the
utilities and transportation commission, and advances universal service
in a manner not inconsistent with the requirements of 47 U.S.C. Sec.
254, the federal telecommunications act of 1996.

NEW SECTION. Sec. 202. A new section is added to chapter 80.36
RCW to read as follows:

(1) The definitions in this section apply throughout this section
and sections 203 through 209 and 212 of this act unless the context
clearly requires otherwise.

(a) "Basic residential service" means those services set out in 47
C.F.R. Sec. 54.101(a)(2011) and mandatory extended area service
approved by the commission.

(b) "Basic telecommunications services" means the following
services:

(i) Single-party service;
(ii) Voice grade access to the public switched network;
(iii) Support for local usage;
(iv) Dual tone multifrequency signaling (touch-tone);
(v) Access to emergency services (911);
(vi) Access to operator services;
(vii) Access to interexchange services;
(viii) Access to directory assistance; and
(ix) Toll limitation services.
(c) "Communications provider" means a provider of communications
services that assigns a working telephone number to a final consumer
for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

(d) "Communications services" includes telecommunications services and information services and any combination thereof.

(e) "Incumbent local exchange carrier" has the same meaning as set forth in 47 U.S.C. Sec. 251(h).

(f) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communications providers for origination or termination of communications services by or to customers.

(g) "Interconnected voice over internet protocol service" means an interconnected voice over internet protocol service that: (a) Enables real-time, two-way voice communications; (b) requires a broadband connection from the user's location; (c) requires internet protocol-compatible customer premises equipment; and (d) permits users generally to receive calls that originate on the public network and to terminate calls to the public network.

(h) "Program" means the state universal communications services program created in section 203 of this act.

(i) "Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).


(k) "Working telephone number" means a north American numbering plan telephone number, or successor dialing protocol, that is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.

(2) This section expires July 1, 2020.

NEW SECTION. Sec. 203. A new section is added to chapter 80.36 RCW to read as follows:

(1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of basic
telecommunications services under rates, terms, and conditions established by the commission during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support.

(2) Under the program, eligible communications providers may receive distributions from the universal communications services account created in section 208 of this act in exchange for the affirmative agreement to provide continued services under the rates, terms, and conditions established by the commission under this chapter for the period covered by the distribution. The commission must implement and administer the program under terms and conditions established in sections 202 through 208 of this act. Expenditures for the program may not exceed five million dollars per fiscal year.

(3) A communications provider is eligible to receive distributions from the account if:

(a) The communications provider is: (i) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or (ii) a radio communications service company providing wireless two-way voice communications service to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

(b) The customers of the communications provider are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark; and

(c) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services.

(4)(a) Distributions to eligible communications providers are based on a benchmark established by the commission. The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential service provided over the incumbent public network. However, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark.
(b) To receive a distribution under the program, an eligible communications provider must affirmatively consent to continue providing communications services to its customers under rates, terms, and conditions established by the commission pursuant to this chapter for the period covered by the distribution.

(5) The program is funded from amounts deposited by the legislature in the universal communications services account established in section 208 of this act. The commission must operate the program within amounts appropriated for this purpose and deposited in the account.

(6) The commission must periodically review the accounts and records of any communications provider that receives distributions under the program to ensure compliance with the program and monitor the providers' use of the funds.

(7) The commission must establish an advisory board, consisting of a reasonable balance of representatives from different types of communications providers and consumers, to advise the commission on any rules and policies governing the operation of the program.

(8) The program terminates on June 30, 2019, and no distributions may be made after that date.

(9) This section expires July 1, 2020.

NEW SECTION. Sec. 204. A new section is added to chapter 80.36 RCW to read as follows:

(1) To implement the program, the commission must adopt rules for the following purposes:

(a) Operation of the program, including criteria for: Eligibility for distributions; use of the funds; identification of any reports or data that must be filed with the commission, including, but not limited to, how a communication provider used the distributed funds; and the communications provider's infrastructure;

(b) Operation of the universal communications services account established in section 208 of this act;

(c) Establishment of the benchmark used to calculate distributions; and

(d) Readoption, amendment, or repeal of any existing rules adopted pursuant to RCW 80.36.610 and 80.36.620 as necessary to be consistent with sections 202 through 209 of this act.

(2) This section expires July 1, 2020.
NEW SECTION.  Sec. 205.  A new section is added to chapter 80.36 RCW to read as follows:

(1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make or delays in making or filing any reports required by the commission for administration of the program. In addition, the commission may recover amounts determined to have been improperly distributed under section 203 of this act. For the purposes of this section, the provisions of RCW 80.04.380 through 80.04.405, inclusive, apply to all companies that receive support from the universal communications services account created in section 208 of this act.

(2) Any action taken under this section must be taken only after providing the affected communications provider with notice and an opportunity for a hearing, unless otherwise provided by law.

(3) Any amounts recovered under this section must be deposited in the universal communications services account created in section 208 of this act.

(4) This section expires July 1, 2020.

NEW SECTION.  Sec. 206.  A new section is added to chapter 80.36 RCW to read as follows:

(1) The commission may delegate to the commission secretary or other staff the authority to resolve disputes and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

(2) This section expires July 1, 2020.

NEW SECTION.  Sec. 207.  (1) To ensure that this act is implemented in a timely manner, the utilities and transportation commission must adopt rules under section 204 of this act prior to July 1, 2014. To ensure timely implementation of this act, the utilities and transportation commission may initiate efforts to establish an advisory board and other actions under sections 203 and 204 of this act prior to July 1, 2014.

(2) This section expires July 1, 2020.
NEW SECTION.  Sec. 208. A new section is added to chapter 80.36 RCW to read as follows:

(1) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to section 205 of this act. Expenditures from the account may be used only for the purposes of the universal communications services program established in section 203 of this act. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires July 1, 2020.

Sec. 209. RCW 80.36.610 and 1998 c 337 s 2 are each amended to read as follows:

((1)) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the ((federal)) telecommunications act of 1996((, P.L. 104-104 (110 Stat. 56)), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by RCW 80.36.600)). The commission may establish by rule fees to be paid by persons seeking commission action under the ((federal)) telecommunications act of 1996, and by parties to proceedings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act((, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program).

(2) The legislature intends that under the future universal service program established in this state:

(a) Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service in the state;
(b) The contributions shall be competitively and technologically neutral; and

(c) The universal service program to be established in accordance with RCW 80.36.600 shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254).

NEW SECTION. Sec. 210. RCW 80.36.600 (Universal service program--Planning and preparation--Commission's duties--Approval of legislature required--Definitions) and 1999 c 372 s 16 & 1998 c 337 s 1 are each repealed.

NEW SECTION. Sec. 211. A new section is added to chapter 80.36 RCW to read as follows:

(1) The universal communications services program established in sections 201 through 208 of this act terminates on June 30, 2019.

(2) This section expires July 1, 2020.

NEW SECTION. Sec. 212. By December 1, 2017, and in compliance with RCW 43.01.036, the Washington utilities and transportation commission must report to the appropriate committees of the legislature, on the following: (1) Whether funding levels for each small telecommunications company have been adequate to maintain reliable universal service; (2) the future impacts on small telecommunications companies from the elimination of funding under this act; (3) the impacts on customer rates from the current level of funding and the future impacts when the funding terminates under this act; and (4) the impacts on line and service delivery investments when the funding is terminated under this act.

PART III
Appropriations

NEW SECTION. Sec. 301. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--CHILDREN AND FAMILY SERVICES PROGRAM

General Fund--State Appropriation (FY 2014) ............... $347,000
General Fund--State Appropriation (FY 2015) ............... $388,000
The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely to provide a 1.28 percent base rate increase to all subsidized child care providers and to provide an additional 1.28 percent increase to all providers who achieve level 2 or above in the early achievers quality rating and improvement system. These rate increases take effect September 1, 2013.

NEW SECTION. Sec. 302. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--DEVELOPMENTAL DISABILITIES PROGRAM

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for the department of social and health services to contract with a fiscal employer agent to pay individual provider home care workers and to bring the timekeeping and payment system into compliance with federal reporting requirements.

NEW SECTION. Sec. 303. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--ECONOMIC SERVICES PROGRAM

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely to provide a 1.28 percent base rate increase to all subsidized child care providers and to provide an additional 1.28 percent increase to all providers who achieve level 2 or above in the
early achievers quality rating and improvement system. These rate increases take effect September 1, 2013.

NEW SECTION. Sec. 304. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES--AGING AND ADULT SERVICES PROGRAM
General Fund--State Appropriation (FY 2015) ............... $4,894,000
General Fund--Federal Appropriation ..................... $15,150,000
TOTAL APPROPRIATION ............... $20,044,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for the department of social and health services to contract with a fiscal employer agent to pay individual provider home care workers and to bring the timekeeping and payment system into compliance with federal reporting requirements.

NEW SECTION. Sec. 305. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE STATE HEALTH CARE AUTHORITY
General Fund--State Appropriation (FY 2014) ............... $3,673,000
General Fund--State Appropriation (FY 2015) ............... $6,958,000
General Fund--Federal Appropriation ..................... $21,482,000
TOTAL APPROPRIATION ............... $32,113,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely to restore preventative and remaining dental services for currently eligible and newly eligible medicaid adults.

NEW SECTION. Sec. 306. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT--RESTORATION OF AGENCY CENTRAL SERVICES REDUCTIONS
General Fund--State Appropriation (FY 2014) ............... $6,500,000
General Fund--State Appropriation (FY 2015) ............... $6,500,000
TOTAL APPROPRIATION ............... $13,000,000
The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for allocation to state agencies by the office of financial management to restore a portion of the funding reductions to state agency central services.

NEW SECTION. Sec. 307. A new section is added to 2013 1st sp.s. c ... (ESSB 5034) (uncodified) to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT--CONTRIBUTIONS FOR STATE AND SCHOOL DISTRICT EMPLOYEE HEALTH INSURANCE

General Fund--State Appropriation (FY 2014) ............. $7,215,000
General Fund--State Appropriation (FY 2015) ............. $8,607,000
Special Insurance Contribution Adjustment Revolving Fund Appropriation .................. $9,127,000
TOTAL APPROPRIATION .................. $24,949,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section are provided solely for contributions for state and school district employee health insurance required to provide a $150 per month subsidy for plans offered by the public employees' benefits board program in 2014 and 2015 to retirees who are enrolled in medicare parts A and B and who have at least 20 years of service and retirement allowances that do not exceed $80 per month per year of service.

PART IV
Miscellaneous Provisions

NEW SECTION. Sec. 401. (1) Except as provided otherwise in this section, part I of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2013.

(2) Sections 102 through 106 of this act take effect January 1, 2014.

NEW SECTION. Sec. 402. Sections 201 through 206, 208, 209, and 211 of this act take effect July 1, 2014.
NEW SECTION. Sec. 403. Part III of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013.

NEW SECTION. Sec. 404. Section 209 of this act expires July 1, 2020.

NEW SECTION. Sec. 405. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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