

SHORT TITLE: Nine-One-One Emergency Number Act; wireless provider fees; distribution of monies; retention for administrative costs; codification; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 827

By: Herbert

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 2813, as amended by Section 1, Chapter 350, O.S.L. 1995, 2814, as last amended by Section 2, Chapter 350, O.S.L. 1995 and 2815, as amended by Section 3, Chapter 350, O.S.L. 1995 (63 O.S. Supp. 1997, Sections 2813, 2814 and 2815), which relate to the Nine-One-One Emergency Number Act; adding and modifying definitions; adding requirement that wireless telephone service collect certain fees and stating procedure; providing for certain monies in certain counties to go to county sherrif's office; permitting certain administrative cost deduction; requiring provision of certain emergency telephone service; requiring provision of certain information and notification; clarifying references; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2813, as amended by Section 1, Chapter 350, O.S.L. 1995 (63 O.S. Supp. 1997, Section 2813), is amended to read as follows:

Section 2813. As used in the Nine-One-One Emergency Number Act, Section 2811 et seq. of this title, unless the context otherwise requires:

1. "Area served" means the geographic area which shall be served by the emergency telephone service provided by the governing body of a county, municipality, part of a county or combination of such governing bodies;

2. "Emergency telephone service" means any telephone system utilizing a three-digit number, nine-one-one (911), for reporting an emergency to the appropriate public agency providing law enforcement, fire, medical or other emergency services, including ancillary communications systems and personnel necessary to pass the reported emergency to the appropriate emergency service and personnel;

3. "Emergency telephone fee" means a fee to finance the operation of emergency telephone service;

4. "Governing body" means the board of county commissioners of a county, the city council or other governing body of a municipality, or a combination of such boards, councils or other municipal governing bodies, which shall have an administering board as provided in subsection G of Section 2815 of this title. Any such combined administering board shall be formed and shall enter into an agreement between the governing body of each entity in accordance with the Interlocal Cooperation Act. The agreement shall be filed with the office of the county clerk and in the offices of each governmental entity involved;

5. "Local exchange telephone company" means any company providing exchange telephone services to any service user in this state;

6. "Person" means any service user, including but not limited to, any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, private corporation, whether

organized for profit or not, fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy, the United States of America, the state, any political subdivision of the state, or any federal or state agency, department, commission, board or bureau;

7. "Public agency" means any city, town, county, municipal corporation, public district, public trust or public authority located within this state which provides or has authority to provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services;

8. "Service user" means any person who is provided exchange or wireless telephone service in this state; ~~and~~

9. "Tariff rate" means the rate or rates billed by a local exchange telephone company stated in tariffs applicable for such company, as approved by the Oklahoma Corporation Commission, which represent the recurring charges of such local exchange telephone company for exchange telephone service or its equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever; and

10. "Wireless telephone company" means any company providing public telephone services transmitted independent of switched local exchange access telephone service and which may in part be transmitted via cable or wire as part of a larger telephone or cable system, including wireless telephone service such as cellular telephone service, personal communication service, and specialized mobile radio.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2814, as last amended by Section 2, Chapter 350, O.S.L. 1995 (63 O.S. Supp. 1997, Section 2814), is amended to read as follows:

Section 2814. A. In addition to other powers for the protection of the public health, a governing body may provide for the operation of an emergency telephone service and may impose an

emergency telephone fee, as provided in this section, for emergency telephone service in areas, subject to the jurisdiction of the governing body. The governing body may do such other acts as are necessary for the protection and preservation of the public health if necessary for the operation of the emergency telephone system.

B. The governing body is hereby authorized, by ordinance in the case of municipalities and by resolution in the case of counties or a combined governing body, to provide for the operation of emergency telephone service and to impose an emergency telephone fee in the area to be served by the system. The ordinance or resolution shall submit to the voters in the area to be served the question of the imposition of emergency telephone service and the amount of the emergency telephone fee. The ordinance or resolution shall propose the amount of the emergency telephone fee to begin the second year and for each year thereafter, in an amount not greater than fifteen percent (15%) of the tariff rate, and shall call for an election to be held within one (1) year from the date the ordinance or resolution is adopted.

The ordinance or resolution shall also provide for the collection of an amount not to exceed five percent (5%) of the tariff rate in areas subject to the jurisdiction of the governing body for a period of no longer than one (1) year. The one (1) year, five percent (5%) fee shall be a part of, not an addition to, the fee set by the voters. The collection of the five percent (5%) fee may begin, prior to the election, within thirty (30) days after the resolution or ordinance becomes effective. The one (1) year, five percent (5%) fee shall be used to provide for the cost of conducting the election to set the emergency telephone fee and any initial or start-up cost necessary to implement the emergency telephone service. If the fee is not approved by the electors, any remaining money collected during the first year shall be distributed to the

local exchange telephone company and then shall be refunded to each service user charged on a pro rata basis.

C. Within sixty (60) days of the publication of the resolution adopted pursuant to subsection B of this section, there may be filed with the county election board of the affected county or counties a petition signed by not less than three percent (3%) of the total number of votes cast in the next preceding general election of the county or affected area.

Within sixty (60) days of publication of an ordinance adopted by a municipality pursuant to subsection B of this section, there may be filed with the county election board of the county in which the municipality is located a petition signed by not less than three percent (3%) of the total number of votes cast in the next preceding election of the city.

The petitions may request that the question of the installation and operation of emergency telephone service and imposition of the one (1) year, five percent (5%) emergency telephone fee as called for in the resolution or ordinance be disapproved.

Upon determination of the sufficiency of the petition and certification by the county election board or boards, the proposition shall be submitted to the qualified voters of the county, municipality or area to be served not less than sixty (60) days following the certification of the petition.

If a majority of the votes cast in an election held pursuant to subsection B of this section disapprove the operation of emergency telephone service and imposition of an emergency telephone fee or a majority of the votes cast disapprove the one (1) year, five percent (5%) emergency telephone fee, upon certification of the election results by the county election board or boards, the resolution or ordinance shall not take effect and the emergency telephone service and the emergency telephone fee called for in the resolution or ordinance shall not be imposed. If the resolution or ordinance is

disapproved by the electors, any remaining money collected during the first year shall be distributed to the local exchange telephone company and then shall be refunded to each service user charged on a pro rata basis.

D. If the governing board does not take action to provide for the operation of emergency telephone service and to impose an emergency telephone fee as provided in subsection B of this section, there may be filed with the county election board or boards of the affected area a petition signed by not less than three percent (3%) of the total ~~numbers~~ number of votes cast in the next preceding election of the affected area.

The petition shall request that the question of the installation and operation of emergency telephone service and imposition of a fee in an amount not greater than fifteen percent (15%) of the tariff rate be submitted to the qualified voters of the county, municipality or area to be served. Upon determination of the sufficiency of the petition and certification by the county election board or boards, the proposition shall be submitted to the qualified voters of the county, municipality or area to be served not less than sixty (60) days following the certification of the petition.

If a majority of the votes cast at an election held pursuant to this subsection approve the installation and operation of emergency telephone service and imposition of an emergency telephone fee, the governing body shall provide for the installation and operation of the service, impose the approved fee and provide for the governance of the system. If the affected area is governed by two or more governmental entities, the governing bodies of each shall enter into an agreement in accordance with the Interlocal ~~Cooperative~~ Cooperation Act to provide for the governance of the system.

E. Any fee imposed by a county or combined governing body shall not apply to any portion of the county located within the boundaries of a municipality or other governmental entity also imposing an

emergency telephone fee pursuant to the provisions of the Nine-One-One Emergency Number Act. The approved emergency telephone fee shall be effective upon certification of the election results by the county election board or boards. Except as provided for in subsections G and I of this section, an emergency telephone fee imposed prior to the effective date of this act shall continue at the established amount until an election to change the fee is called as provided for in this section.

F. If a majority of the votes cast at an election held pursuant to subsection B of this section approve the installation and operation of emergency telephone service and imposition of an emergency telephone fee, the governing body shall provide for the installation and operation of the service and impose the approved fee. The initial five percent (5%) fee, established by resolution or an ordinance, as provided pursuant to the provisions of subsection B of this section shall remain in effect for the remainder of the first year.

G. The emergency telephone fee approved pursuant to the provisions of this section shall be reviewed at least once each calendar year by the governing body which shall, in accordance with subsection D of Section 2815 of this title, establish the amount of the fee for the next calendar year, not to exceed the amount set by the electors. The governing body shall have the power and authority to reduce the emergency telephone fee being paid by the service users of the emergency telephone system to the estimated amount needed for the annual operation and maintenance of the system. If the governing body makes a reduction and in a subsequent year determines it is necessary to increase the fee to operate and maintain the system, the governing body may raise the fee up to an amount not to exceed the amount previously set by the electors. Any fee imposed by the electors of a county, municipality or area served shall remain at the amount approved by the electors until a new vote



of the electors is conducted in the manner for which an election may be conducted to impose a fee as provided for in this section. The proceeds of the fee shall be utilized to pay for the operation of emergency telephone service as specified in subsection A of this section. Collection of the fee may begin at any time if an existing service is already operative or at any time subsequent to execution of a contract with the provider of the emergency telephone service at the discretion of the governing body.

H. If the fee approved by the voters is less than fifteen percent (15%) and the governing body determines there exists a need for ancillary communications systems necessary to communicate the reported emergency to the appropriate emergency service and personnel and the governing body also determines that the fee set by the electors is not sufficient to fund the ancillary communications systems, the governing body may by resolution or ordinance call an election to submit the question of raising the voter-approved fee in a sufficient amount, not to exceed fifteen percent (15%), for such additional time as determined by the governing body it is necessary to purchase the ancillary communications equipment. The vote shall be conducted in the manner provided for in subsection B of this section.

I. A governing body with an existing emergency telephone service system in operation prior to ~~the effective date of this act~~ July 1, 1995, may by ordinance or resolution restore the emergency telephone fee set at three percent (3%) to an amount not to exceed five percent (5%) of the tariff rate for such additional time as is necessary to fund ancillary communications equipment necessary to communicate the reported emergency to the appropriate emergency service and personnel.

Within sixty (60) days of the publication of the resolution adopted pursuant to this subsection, there may be filed with the county election board of the affected county or counties a petition

signed by not less than three percent (3%) of the total number of votes cast in the next preceding general election of the county or affected area.

Within sixty (60) days of publication of an ordinance adopted by a municipality pursuant to this subsection, there may be filed with the county election board of the county in which the municipality is located a petition signed by not less than three percent (3%) of the total number of votes cast in the next preceding election of the city.

The petitions may request that the question of restoring the emergency telephone fee to an amount not to exceed five percent (5%) of the tariff rate to fund ancillary communications equipment be submitted to the qualified voters of the county, municipality or area to be served.

Upon determination of the sufficiency of the petition and certification by the county election board or boards, the proposition shall be submitted to the qualified voters of the county, municipality or area to be served not less than sixty (60) days following the certification of the petition. If a majority of the votes cast at the election are for restoring the emergency telephone fee to an amount not to exceed five percent (5%) of the tariff rate to fund ancillary communications equipment, the resolution or ordinance restoring the fee shall become effective. The increase of the fee may be implemented within thirty (30) days after the resolution or ordinance becomes effective.

J. The tariff rate used for initial calculation of the emergency telephone service fee shall remain static for the purpose of calculating future fees for emergency telephone service. Therefore, future rate changes for emergency telephone service shall be stated as a percentage of the initial tariff rate.

K. The emergency telephone fee shall be imposed only upon the amount received from the tariff for exchange telephone service or

its equivalent. No fee shall be imposed upon more than one hundred exchange access lines or their equivalent per person per location.

L. In jurisdictions in which an emergency telephone fee has been approved pursuant to the provisions of this section and in which emergency telephone service is currently operating, wireless telephone companies shall add a nine-one-one fee in an amount not to exceed one-half (1/2) the amount assessed by the local governing body for local exchange telephone company customers, which shall be added to all current bills, whether for residential or business service, rendered for that telephone service. The amount of the fee shall be determined by the governing body as provided in subsection D of Section 2815 of this title. In the event the wireless telephone company provides automatic location and number identification information to a public agency, the amount collected from current bills shall be reduced to an amount to be determined by the governing body as provided in subsection D of Section 2815 of this title. The fee shall be assessed by the governing body for each wireless telephone customer with a primary residential or business address falling within the corporate limits of that municipality or within the boundaries of the county. Any fee imposed by a county or combined governing body shall not apply to any portion of the county located within the boundaries of a municipality or other governmental entity also imposing an emergency telephone fee pursuant to the provisions of the Nine-One-One Emergency Number Act. In counties with a population of four hundred fifty thousand (450,000) or more in which an emergency telephone fee has been approved pursuant to the provisions of this section and in which emergency telephone service is currently operating, at least one-half (1/2) of the fee assessed to each wireless telephone customer as provided for in this subsection shall be transferred to the county sheriff's office for use in providing emergency response services.

M. Every billed service user shall be liable for any fee imposed pursuant to this section until it has been paid to the local exchange telephone company or wireless telephone company.

~~M.~~ N. The duty to collect any fee imposed pursuant to the authority of the Nine-One-One Emergency Number Act from a service user shall commence at a time specified by the governing body. Fees imposed pursuant to this section that are required to be collected by the local exchange telephone company or wireless telephone company shall be added to and shall be stated separately in the billings to the service user.

~~N.~~ O. The local exchange telephone company or wireless telephone company shall have no obligation to take any legal action to enforce the collection of any fee imposed pursuant to authority of this section, however, should any service user tender a payment insufficient to satisfy all charges, tariffs, fees and taxes for exchange telephone service or wireless telephone service, the amount tendered shall be credited to the emergency telephone fee in the same manner as other taxes and fees. The local exchange or wireless telephone company shall annually provide the governing body with a list of amounts uncollected along with the names and addresses of those service users which carry a balance that can be determined by the local exchange or wireless telephone company to be nonpayment of any fee imposed pursuant to the authority of this section.

~~O.~~ P. Any fee imposed pursuant to the authority provided by this section shall be collected insofar as practicable at the same time as, and along with, the charges for exchange telephone service or wireless telephone service in accordance with the regular billing practice of the local exchange telephone service or wireless telephone company. The tariff rates determined by or stated in the billing of the local exchange telephone company shall be presumed to be correct if such charges were made in accordance with the business practices of the local exchange telephone company. The presumption

may be rebutted by evidence which establishes that an incorrect tariff rate was charged.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2815, as amended by Section 3, Chapter 350, O.S.L. 1995 (63 O.S. Supp. 1997, Section 2815), is amended to read as follows:

Section 2815. A. Any fee imposed pursuant to Section 2814 of this title and the amounts required to be collected are due monthly. The amount of fee collected in one (1) month by the local exchange or wireless telephone company shall be remitted to the governing body no later than thirty (30) days after the close of the month in which such fees were collected. All fees collected by the local exchange or wireless telephone company and remitted to the governing body and any other money collected to fund the emergency telephone system shall be deposited in a special nine-one-one account established by the governing body, and shall be used only to fund the expenditures authorized by the Nine-One-One Emergency Number Act. The governing body shall account for all disbursements from the account and shall not allow the funds to be transferred to another account not specifically established for the operation of the emergency telephone system.

B. On or before the last day of each month, a return for the preceding month shall be filed with the governing body in a form the governing body and the local exchange or wireless telephone company agree to. The local exchange or wireless telephone company required to file the return shall deliver the return together with a remittance of the amount of the fee payable to the treasurer or other person responsible to the governing body for receipt of payments from the fee. The local exchange or wireless telephone company shall maintain records of the amount of any fee collected in accordance with the provisions of the Nine-One-One Emergency Number Act. The records shall be maintained for a period of one (1) year from the time the fee is collected.

C. From every remittance of the collected fee to the governing body made on or before the date when the same becomes due, the local exchange telephone company required to remit the fee shall be entitled to deduct and retain for administrative costs, an amount not to exceed three percent (3%) of the first five percent (5%) of the emergency telephone fee. From every remittance of the collected fee to the governing body made on or before the date when the same becomes due, the wireless telephone company required to remit the fee shall be entitled to deduct and retain for administrative costs an amount not to exceed three percent (3%) of the nine-one-one fee collected.

D. At least once each calendar year, the governing body shall establish the fee for the subsequent year in an amount not to exceed the amount approved by the voters as provided by the provisions of Section 2814 of this title or the maximum amount allowed by the Nine-One-One Emergency Number Act that, together with any surplus revenues, will produce sufficient revenues to fund the expenditures authorized by the Nine-One-One Emergency Number Act. Amounts collected in excess of that necessary within a given year shall be carried forward to subsequent years. The governing body shall make the determination of the fee amount no later than September 1 of each year and shall fix the new fee to take effect commencing with the first billing period of each service user on or following the next January 1. Immediately upon making its determination and fixing the fee, the governing body shall publish in its minutes the new fee, and it shall, at least ninety (90) days before the new fee shall become effective, notify by certified mail every local exchange telephone company providing emergency telephone service to areas within the jurisdiction of the governing body. The governing body may at its own expense require an annual audit of the books and records of the local exchange or wireless telephone company

concerning the collection and remittance of the fee authorized by the Nine-One-One Emergency Number Act.

E. The governing body shall be required to have conducted separately or as a part of the annual audit required by law of the municipality or county an annual audit of any accounts established or used by the governing body for the operation of an emergency telephone system. The audit may be conducted by the State Auditor and Inspector at the discretion of the governing body. All audits shall be conducted in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. A copy of the audit shall be filed with the State Auditor and Inspector and action taken in accordance with Section 212A of Title 74 of the Oklahoma Statutes. The audit of the emergency telephone system accounts may be paid for and be considered a part of the operating expenses of the emergency telephone system.

F. The governing body shall meet at least quarterly to oversee the operations of the emergency telephone system, review expenditures, set and approve an operating budget and take such other action as necessary for the operation and management of the system. The records and meetings of the governing body shall be subject to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

G. A governing body made up of two or more governmental entities shall have a board consisting of not less than three members; provided, the board shall consist of at least one member representing each governmental entity, appointed by the governing body of each participating governmental entities, as set forth in the agreement forming the board. The members shall serve for terms of not more than three (3) years as set forth in the agreement. Members may be appointed to serve more than one term. The names of the members of the governing body board and the appointing authority

of each member shall be maintained in the office of the county clerk in the county or counties in which the system operates, along with copies of the agreement forming the board and any amendments to that agreement.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2815.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

All local exchange or wireless telephone companies providing dial tone to service users in an area in which nine-one-one emergency telephone service is currently operating shall also provide emergency telephone service to all subscribing service users in that area. Wireless telephone companies shall provide information regarding subscribers to cities and counties answering emergency telephone calls for service and to local exchange companies for maintenance of existing nine-one-one databases. Such information shall include, but not be limited to, the names, telephone numbers and addresses of subscribers.

SECTION 5. This act shall become effective July 1, 1998.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-2290

WHT