

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. \_\_\_\_\_

By: Easley

AS INTRODUCED

An Act relating to the Corporation Commission; amending 17 O.S. 1991, Section 1, as amended by Section 1, Chapter 48, O.S.L. 1998 (17 O.S. Supp. 1998, Section 1), which relates to fines; authorizing the Commission to fine public utilities certain amount per day; amending Section 9, Chapter 408, O.S.L. 1997 (17 O.S. Supp. 1998, Section 139.109), which relates to the Oklahoma E911 Emergency Service Fund; authorizing the Corporation Commission to recover cost of administering certain fund directly from the fund; requiring Corporation Commissioners and certain administrative law judges and hearing officers to be subject to the Code of Judicial Conduct; prohibiting Corporation Commissioners from engaging in certain communications with parties to any case pending before the Commission; requiring Commissioner to recuse himself or herself from hearing; requiring other Commissioners to order such Commissioner recused under certain circumstance; requiring Commissioner to recuse himself or herself in certain proceedings if certain communication has occurred; stating application; prohibiting Commissioners from communicating with certain employees involved in certain cases; authorizing the Chief Justice of the Supreme Court to appoint a judge to serve in recused Commissioner's place for certain case; amending Section 3, Chapter 282, O.S.L. 1993, as last amended by Section 3, Chapter 315, O.S.L. 1998 (25 O.S. Supp. 1998, Section 307.1), which relates to teleconferences by public bodies; providing exemption for the Corporation Commission; amending 68 O.S. 1991, Section 1357, as last amended by Section 5, Chapter 301, O.S.L. 1998 (68 O.S. Supp. 1998, Section 1357), which relates to tax exemptions; providing tax exemption for certain sales of personal property used by certified telecommunications providers for certain purposes; providing for codification; and declaring an emergency.

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

SECTION 418. AMENDATORY 17 O.S. 1991, Section 1, as amended by Section 1, Chapter 48, O.S.L. 1998 (17 O.S. Supp. 1998, Section 1), is amended to read as follows:

Section 1. Any corporation, person or firm may be fined by the Corporation Commission, a sum not to exceed Five Hundred Dollars (\$500.00), as the Commission may deem proper, for the violation of any of its rules or requirements and each day's continuance of such violation, after due service upon such corporation, person or firm, of the order or requirement of the Commission shall be a separate offense. Should the operation of such order or requirement be suspended, pending an appeal therefrom, the period of such suspension shall not be computed against the corporation, person or firm, in the matter of its liability to fines and penalties. Any corporation, person or firm that switches the local or long distance telephone service provider of a customer without the consent of the customer may be fined by the Corporation Commission a sum not to exceed Ten Thousand Dollars (\$10,000.00) per occurrence, as the Commission may deem proper after notice and hearing. Further provided that any corporation, person or firm that is also a public utility as defined by the rules of the Corporation Commission may be fined by the Commission a sum not exceeding Ten Thousand Dollars (\$10,000.00), as the Commission may deem proper, for the violation of any Commission rules and each day's continuance of such violation, after due service upon such corporation, person or firm, of the order of the Commission shall be considered a separate offense.

SECTION 1. AMENDATORY Section 9, Chapter 408, O.S.L. 1997 (17 O.S. Supp. 1998, Section 139.109), is amended to read as follows:

Section 139.109 A. There is hereby created within the ~~Oklahoma~~ Corporation Commission the "Oklahoma E911 Emergency Service Fund". Beginning September 1, 1997, each local exchange telecommunications service provider shall annually contribute fifty cents (\$.50) per retail local exchange access line to the Oklahoma E911 Emergency Service Fund until the total amount contributed by all providers to

the ~~Fund~~ fund equals Five Million Dollars (\$5,000,000.00). The contribution amount for each service provider shall be based upon the number of retail local exchange access lines of that service provider in service on July 1 of each applicable year. The Oklahoma E911 Emergency Service Fund shall be administered by the ~~Oklahoma Corporation~~ Commission and used to defray the cost of purchasing and installing equipment for enhanced 911 emergency systems across the state. The Commission shall recover the cost of administering the fund from the fund directly. Preference for funding shall be given first to those systems established in areas of the state which do not have access to 911 emergency service before July 1, 1997, and second to areas of the state which do not have access to enhanced 911 emergency services. Funding from the E911 Emergency Service Fund shall not be used for ongoing operating costs of any emergency telephone service system. To qualify for funding, the emergency telephone service system shall have been or be in the process of being approved as provided for in the Nine-One-One Emergency Number Act. Local exchange telecommunications service providers serving fifteen percent (15%) or more of the access lines in the state may not apply for recovery of the contributions made to the E911 Emergency Service Fund from the Oklahoma Universal Service Fund created in Section ~~6~~ 139.106 of this ~~act~~ title. All monies in the Oklahoma E911 Emergency Service Fund shall be expended only for the purposes set forth in this subsection.

B. There is hereby created within the Oklahoma Department of Vocational and Technical Education the "Oklahoma Telecommunications Technology Training Fund". Beginning September 1, 1997, each local exchange telecommunications service provider shall annually contribute seventy-five cents (\$.75) per retail local exchange access line to the Oklahoma Telecommunications Technology Training Fund until the total amount contributed by all providers to the ~~Fund~~ fund equals Seven Million Dollars (\$7,000,000.00). The contribution

amount for each service provider shall be based upon the number of retail local exchange access lines of that service provider in service on July 1 of each applicable year. The Oklahoma Telecommunications Technology Training Fund shall be administered by the Oklahoma Department of Vocational and Technical Education working in conjunction with OneNet, and shall be used to provide statewide teacher training in the most effective use of telecommunications and distance learning technology for the enhancement of education throughout the state. Local exchange telecommunications service providers serving fifteen percent (15%) or more of the access lines in the state may not apply for recovery of the contributions made to the Oklahoma Telecommunications Technology Training Fund from the Oklahoma Universal Service Fund created in Section ~~6~~ 139.106 of this ~~act~~ title. All monies in the Oklahoma Telecommunications Technology Training Fund shall be expended only for the purposes set forth in this subsection.

C. The following services are hereby declared to be Special Universal Services and such services shall be provided only after funding for the Oklahoma Universal Service Fund is implemented as set forth in this act:

1. Each not-for-profit hospital in the state shall, upon written request, receive one incoming, toll-free phone number and up to a total of five access lines, free of charge, to allow incoming, toll-free calls from any location within the geographic area served by the hospital;

2. Each public school building wherein classrooms are contained and each public library in the state shall, upon written request, receive one incoming, toll-free phone number and up to a total of five access lines, free of charge, to allow incoming, toll-free calls from any location within the geographic area served by the school or the public library;

3. Each public school building wherein classrooms are contained and each public library in the state shall, upon written request, receive one access line, free of charge, with the ability to connect to an Internet service provider at 56 kbps, in the most economically efficient manner for the carrier, or an equivalent dollar credit to be applied by the public school or public library toward similar services provided by the same carrier, for the purpose of accessing the Internet. In no case shall the Oklahoma Universal Service Fund reimburse an entity for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet; and

4. Each county seat in the state shall, upon written request of the board of county commissioners, receive one incoming, toll-free phone number and up to a total of five access lines, free of charge, to allow incoming, toll-free calls from any location within the geographic area served by the county seat.

D. To the extent Special Universal Services are purchased from a telecommunications service provider by another carrier, the Special Universal Services are for the exclusive use of the not-for-profit hospital, public school, public library or county government. Under no circumstances shall the not-for-profit hospital, public school, public library or county government sell, repackage or share Special Universal Services with any other entity.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 17, unless there is created a duplication in numbering, reads as follows:

In the performance of their adjudicative functions, the Corporation Commissioners and all persons appointed or acting in the capacity of administrative law judge or administrative hearing officer shall be subject to the Code of Judicial Conduct.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. While exercising their adjudicative authority the Corporation Commissioners shall not, directly or indirectly, engage in any communication, either written or oral, with any party or their representatives to any case pending before the Corporation Commission other than those occurring in the course of the proceedings. Any Commissioner engaging in such communication shall recuse himself or herself from participating in any hearing or deliberations, or otherwise, regarding such matter and if a Commissioner fails to recuse himself or herself he or she shall be ordered recused by the remaining Commissioners.

B. In the event a Corporation Commissioner has engaged in any communication, whether direct or indirect and whether written or oral, with any party or their representatives regarding any matter which subsequently becomes a case before the Corporation Commission in which the Commission is asked to exercise its adjudicative authority, the Commissioner engaging in such a communication shall recuse himself or herself from participating in any hearing or deliberations, or otherwise, regarding such matter and if a Commissioner fails to recuse himself or herself he or she shall be ordered recused by the remaining Commissioners.

C. The provisions of subsections A and B of this section shall apply in all cases where the Corporation Commission or its divisions or staff are parties to the action, either as the applicant, a respondent or as an interested party. The Corporation Commissioners shall not communicate, directly or indirectly, orally or in writing, with any employee of the Commission who is involved in a case regarding the subject matter of the case and if a Commissioner has engaged in any communication regarding the subject matter of a case before it became a case the provisions of subsection B shall apply.

D. In every case where a Corporation Commissioner has been recused the Chief Justice of the Supreme Court shall appoint a judge of the district court, a Judge from the Court of Appeals or a

Justice of the Supreme Court to serve in the recused Corporation Commissioner's place for the purpose of hearing the case in which the recusal occurred.

SECTION 4. AMENDATORY Section 3, Chapter 282, O.S.L. 1993, as last amended by Section 3, Chapter 315, O.S.L. 1998 (25 O.S. Supp. 1998, Section 307.1), is amended to read as follows:

Section 307.1 A. No public body shall hold meetings by teleconference except:

1. Oklahoma Futures;
2. The Oklahoma State Regents for Higher Education;
3. The Oklahoma Board of Medical Licensure and Supervision;
4. The State Board of Osteopathic Examiners;
5. The Board of Dentistry;
6. The Variance and Appeals Boards created in Sections 1021.1, 1697 and 1850.16 of Title 59 of the Oklahoma Statutes; ~~and~~
7. The Corporation Commission; and
8. A public trust whose beneficiary is a municipality; however, no more than twenty percent (20%) of a quorum of the trustees may participate by teleconference and during any such meetings all votes shall be roll call votes.

B. No public body authorized to hold meetings by teleconference shall conduct an executive session by teleconference.

SECTION 5. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 5, Chapter 301, O.S.L. 1998 (68 O.S. Supp. 1998, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by Section 1350 et seq. of this title. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television, and the servicing of any advertising devices;

5. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This

exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

6. Sale of natural or artificial gas and electricity when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 1370.2 of this title, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 1370.2 of this title, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of medicines or drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

8. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

11. Sales of food or food products to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which are primarily involved in the collection and distribution of food and other household products to

other organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which facilitate the distribution of such products to the needy, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of food, food products, or clothing to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

14. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of this section. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion

of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility;

16. Sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges;

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

19. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and
- b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer;

20. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" means a device which replaces a missing part of the human body and shall include any supplies physically connected to the device;

21. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a documentary, special, music video, or a television program that will serve as a pilot for or be

a segment of an ongoing dramatic or situation comedy series filmed or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996;

22. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft;

23. Beginning July 1, 1998, sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state; ~~and~~

24. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services; and

25. Sales of personal property purchased, consumed or used by a certified telecommunications provider in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching, or monitoring of telecommunications services for sale. Tangible personal property shall include, but is not limited to:

a. ancillary equipment or apparatus:

(1) necessary to regulate or control the tangible personal property described in this paragraph, or

(2) which enables the tangible personal property described in this paragraph to accomplish its function,

b. equipment or apparatus purchased, consumed or used for maintaining, repairing, modifying, testing or training

with respect to tangible personal property described  
in this paragraph, or

c. equipment or apparatus purchased, consumed or used in  
billing customers with respect to telecommunications  
services for sale.

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.

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