

ENROLLED HOUSE
BILL NO. 1751

By: Case, Kiesel, Brannon,
Smithson, McMullen and
Nance of the House

and

Monson of the Senate

An Act relating to telecommunications; amending 63 O.S. 2001, Sections 2843, as amended by Section 1, Chapter 456, O.S.L. 2002, 2843.1 as amended by Section 2, Chapter 456, O.S.L. 2002 and 2844 as amended by Section 3, Chapter 456, O.S.L. 2002 (63 O.S. Supp. 2004, Sections 2843, 2843.1 and 2844), which relate to the Nine-One-One Wireless Emergency Number Act; deleting certain definition; modifying fee collection suspension time period in certain counties; deleting requirement to reimburse wireless service providers for certain costs; prohibiting construction of the Act to limit wireless service providers ability to recover certain costs directly from customers; deleting requirement to prohibit disclosure of certain information; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2843, as amended by Section 1, Chapter 456, O.S.L. 2002 (63 O.S. Supp. 2004, Section 2843), is amended to read as follows:

Section 2843. As used in the Nine-One-One Wireless Emergency Number Act, 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. "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 with 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;

3. "Nine-one-one wireless emergency telephone service" means any telephone system whereby wireless telephone subscribers may utilize 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 which the wireless service provider is required to provide pursuant to the Federal Communications Commission Order 94-102 (961 Federal Register 40348);

4. "Nine-one-one emergency wireless telephone fee" means a fee to finance the installation and operation of emergency wireless telephone service and related equipment;

5. "Local exchange telephone company" means any company providing exchange telephone service to any service user in this state, and shall include any competitive local exchange carrier as defined in Section 139.102 of Title 17 of the Oklahoma Statutes;

6. "Person" means any service user, including 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. "Place of primary use" shall have the same meaning as defined in Section 55001 of Title 68 of the Oklahoma Statutes;

8. "Proprietary information" shall include subscriber, market share, cost and review information;

9. "Public agency" means any city, town, county, municipal corporation, public district, public trust, substate planning district 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;

10. "Substate planning district" means the following organizations:

- a. Association of Central Oklahoma Governments (ACOG),
- b. Association of South Central Oklahoma Governments (ASCOG),
- c. Central Oklahoma Economic Development District (COEDD),
- d. Eastern Oklahoma Economic Development District (EOEDD),
- e. Grand Gateway Economic Development Association (GGEDA),
- f. Indian Nations Council of Governments (INCOG),

- g. Kiamichi Economic Development District (KEDDO),
- h. Northern Oklahoma Development Association (NODA),
- i. Oklahoma Economic Development Association (OEDA),
- j. Southern Oklahoma Development Association (SODA), and
- k. South Western Oklahoma Development Authority (SWODA);

11. "Wireless service provider" means a provider of commercial mobile service under Section 332(d) of the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

- a. a service whose users do not have access to nine-one-one service,
- b. a communication channel used only for data transmission, or
- c. a wireless roaming service or other nonlocal radio access line service; and

12. "Wireless telecommunications connection" means the ten-digit access number assigned to a customer regardless of whether more than one such number is aggregated for the purpose of billing a service user; ~~and~~

~~13. "Uniform statewide agreement" means an agreement between each wireless service provider and the substate planning district providing the terms of implementation, installation, maintenance and reimbursement for the provision of nine-one-one wireless emergency telephone service. Each substate planning district or public agency shall operate under the uniform statewide agreement. The terms of such agreement shall be negotiated by representatives from each substate planning district in paragraph 10 of this section and representatives of the wireless service providers operating in the State of Oklahoma on the effective date of this act.~~

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2843.1, as amended by Section 2, Chapter 456, O.S.L. 2002 (63 O.S. Supp. 2004, Section 2843.1), is amended to read as follows:

Section 2843.1 A. To provide for processing nine-one-one emergency wireless calls, the board of county commissioners of a county may by resolution submit to the voters of the county the question of the imposition of a nine-one-one emergency wireless telephone fee for each wireless connection in the county as determined by the subscriber's place of primary use. The resolution shall include the amount of the fee which shall be fifty cents (\$0.50) per month for each wireless connection, and shall call for an election to be held within one (1) year from the date the resolution is adopted. If a majority of the votes cast in an

election held approve the imposition of an emergency telephone fee, the fee shall be imposed. A political subdivision may not impose another fee on a wireless service provider or subscriber for nine-one-one emergency service. The proceeds of the fee shall be utilized to pay for the operation of emergency wireless telephone service as specified in this section.

B. A wireless service provider shall collect the emergency wireless telephone fee in an amount equal to the amount approved as provided for in subsection A of this section for each wireless telecommunications connection from each of its subscribers of wireless telephone service within the boundaries of the county as determined by the subscriber's place of primary use and shall pay the money collected to the substate planning district that represents that county not later than thirty (30) days after the last day of the month during which the fees were collected. The wireless service provider may retain an administrative fee of two percent (2%) of the amount collected when remitted in the time specified, unless otherwise agreed upon. The money remitted to the substate planning district and any other money collected to fund the emergency wireless telephone system shall be deposited in a special wireless nine-one-one account established by the district.

C. Money collected under subsection B of this section shall be used only for services related to nine-one-one emergency wireless telephone services, including automatic number identification and automatic location information services. The substate planning districts shall distribute the money collected for each county which has approved the emergency wireless telephone fee to each public agency within that county which has established emergency wireless telephone service or has sent a written request for installation, maintenance, and operation of an emergency wireless telephone service to a wireless service provider. The money remitted to the public agency and any other money collected to fund the emergency wireless telephone system shall be deposited in a special wireless nine-one-one account established by the substate planning district. From the emergency wireless telephone fee, the substate planning districts shall distribute to other public agencies in the county their proportionate share attributable to emergency wireless telephone services as determined by at least an annual census of wireless users provided by the wireless service provider. All wireless user information provided by a wireless service provider shall be deemed proprietary and is not subject to disclosure to the public or any other party. Remittance of the fee to a public agency may begin at any time if an existing emergency wireless telephone service is already operative or upon written request by the local governing body to the provider for installation, maintenance, and operation of a nine-one-one emergency wireless telephone service and related equipment. Amounts not used within a given year shall be carried forward.

D. Every billed service user shall be liable for any emergency wireless telephone fee imposed pursuant to this section until it has been paid to the wireless service provider.

E. The duty to collect any emergency wireless telephone fee imposed pursuant to the authority of the Nine-One-One Wireless Emergency Number Act from a service user shall commence within sixty (60) days following the date that a wireless service provider receives notice from a local county that the voters in a county have

approved the fee, the amount of such fee and the address to which the fee should be remitted. Fees imposed pursuant to this section that are required to be collected by the wireless service provider shall be added to and shall be stated separately in the billings to the service user.

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

G. Any emergency wireless telephone 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 wireless telephone service in accordance with the regular billing practice of the wireless telephone service. However, if the public agency has not deployed nine-one-one emergency wireless telephone service within twenty-four (24) months or thirty-six (36) months for counties with a population of less than thirty thousand (30,000), from the initial collection of the fee under subsection B of this section, the collection of the fee may be suspended until such service is deployed. A wireless service provider is not liable for failing to suspend collection of a fee.

~~H. On receipt of an invoice from a wireless service provider for the implementation, installation, maintenance and operation of nine-one-one emergency wireless telephone service, the public agency shall reimburse the wireless service provider in accordance with the uniform statewide agreement for all agreed to expenses related to nine-one-one emergency wireless telephone service. Reimbursement shall be made on a competitively neutral basis. Nothing in the Nine-One-One Wireless Emergency Number Act shall be construed to limit the ability of a wireless service provider from recovering its costs associated with designing, developing, deploying, and maintaining wireless enhanced nine-one-one service directly from the customers of the provider, whether the costs are itemized on the bill of the wireless customer as a surcharge or by any other lawful means.~~

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2844, as amended by Section 3, Chapter 456, O.S.L. 2002 (63 O.S. Supp. 2004, Section 2844), is amended to read as follows:

Section 2844. A. Any nine-one-one emergency wireless telephone fee imposed pursuant to Section 2843.1 of this title and the amounts required to be collected are due monthly. The amount of fee collected in one (1) month by the wireless service provider shall be remitted to the appropriate substate planning district no later than thirty (30) days after the close of the month in which such fees were collected. All fees collected by the wireless service provider and remitted to a substate planning district and any other money collected to fund the emergency wireless telephone system shall be

deposited in a special nine-one-one account established by the district. Each district shall account for all disbursements from the account established for the operation of the emergency wireless telephone system.

B. The wireless service provider shall maintain records of the amount of any nine-one-one emergency wireless telephone fee collected in accordance with the provisions of the Nine-One-One Wireless Emergency Number Act. The records shall be maintained for a period of three (3) years from the time the fee is collected. The State Auditor and Inspector or any substate planning district or public agency may require an annual audit of the books and records of the wireless service provider concerning the collection and remittance of the fee authorized by the Nine-One-One Wireless Emergency Number Act. Auditors shall have access to all information used by the wireless service provider to calculate and remit the nine-one-one emergency wireless telephone fee. ~~Any information obtained by an auditor which is deemed proprietary under the uniform statewide agreement shall not be subject to disclosure and shall be kept confidential pursuant to procedures outlined in the uniform statewide agreement.~~ Any audit expenses shall be reimbursable pursuant to Section 2843.1 of this title.

C. A public agency 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 wireless telephone system. The audit may be conducted by the State Auditor and Inspector at the discretion of the public agency. 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 cost of the audit of the emergency wireless telephone system accounts may be paid from and be considered a part of the operating expenses of the emergency wireless telephone system. Proprietary information of the wireless service providers shall be confidential. Audit information pertaining to revenues collected or disbursed may be released only in aggregate form so that no provider-specific information may be extrapolated.

D. The governing body of the public agency shall meet at least quarterly to oversee the operations of the emergency wireless 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 Records Act and the Oklahoma Open Meeting Act. Notwithstanding any other provision to the contrary, all information deemed proprietary under subsection C of Section 2843.1 of this title shall be held confidential.

SECTION 4. 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.

Passed the House of Representatives the 24th day of May, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the 25th day of May, 2005.

Presiding Officer of the Senate