ENGROSSED HOUSE
BILL NO. 2556 By: Martin (Steve) of the House

and

Bingman of the Senate

(emergency telephone services - Nine-One-One Wireless Emergency Number Act - prepaid wireless telecommunication services - prepaid wireless nine-one-one fee - consumer liable for payment of the fee - notice from the Oklahoma Tax Commission - revenue to be remitted to certain governing bodies - formula for calculating the share for each governing body - money to be deposited in a special account - certain wireless user information to be proprietary – codification - effective date)

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2843, as last amended by Section 2, Chapter 353, O.S.L. 2007 (63 O.S. Supp. 2009, 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" means~~:~~

~~a.~~ the street address representative of where the use of the mobile telecommunications service of the customer primarily occurs, which shall be the residential street address or the primary business street address of the customer~~, if known,~~

~~b. if the street address of the customer is not known, the billing address of the customer, if known,~~

~~c. if neither the street address nor Oklahoma billing address of the customer is known, the wireless provider shall disclose to the substate planning district its chosen means to determine the customer's location for remittance purposes~~ in accordance with the Mobile Telecommunications Sourcing Act, P.L. No. 106-252, codified at 4 U.S.C. 116-126;

8. "Prepaid wireless telecommunications service" means prepaid wireless calling service as defined in paragraph 12 of subsection A of Section 1354.30 of Title 68 of the Oklahoma Statutes;

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

~~9.~~ 10. "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.~~ 11. "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.~~ 12. "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.~~ 13. "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.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2843.1, as last amended by Section 3, Chapter 353, O.S.L. 2007 (63 O.S. Supp. 2009, 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, excluding a connection for prepaid wireless telecommunications services, 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. Prepaid wireless telecommunications services shall be subject only to the fees as set forth in Section 3 of this act.

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. ~~As of the effective date of this section, each prepaid wireless service provider shall remit the emergency wireless telephone fee for its prepaid wireless customers in accordance with either of the following methods:~~

~~1. For each active prepaid wireless customer whose account balance is equal to or greater than the amount of the fee, the provider shall deduct and remit the fee; and~~

~~2. If it is not technically feasible for the prepaid wireless service provider to deduct the emergency wireless telephone fee from an active account, the prepaid wireless service provider shall pay the fee for each active prepaid account and seek reimbursement using whatever means are available to the 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~~ on the first day of the calendar quarter following the date that a wireless service provider receives notice from a local county which shall be at least sixty (60) days from the date 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 may be added to and shall be stated separately in any 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. ~~If the customer has prepaid for wireless telephone service, the wireless service provider shall remit the emergency wireless telephone fee in~~

~~accordance with subsection D of this section.~~ 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. 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2843.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, unless the context otherwise requires:

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

2. “Prepaid wireless nine-one-one fee” means the fee that is required to be collected by a seller from a consumer in the amount established in this section;

3. “Provider” means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

4. “Retail transaction” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than for resale; and

5. “Seller” means a person who sells prepaid wireless telecommunications service to another person.

B. There is hereby imposed a prepaid wireless nine-one-one fee of twenty-five cents ($0.25) per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection G of this section, the adjusted amount.

C. The prepaid wireless nine-one-one fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless nine-one-one fee shall either be separately stated on an invoice, receipt or similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

D. For purposes of subsection C of this section, a retail transaction that is effected in person by a consumer at a business

location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for the purposes of paragraph 5 of subsection A of Section 1354.27 of Title 68 of the Oklahoma Statutes.

E. The prepaid wireless nine-one-one fee is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless nine-one-one fees that the seller collects from the consumer as provided for in this section, including all charges that the seller is deemed to collect where the amount of the fee has not been separately stated on an invoice, receipt, or other similar document provided by the consumer to the seller.

F. If the amount of the prepaid wireless nine-one-one fee is separately stated on the invoice, the prepaid wireless nine-one-one fee shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of this state, or any intergovernmental agency.

G. The prepaid wireless nine-one-one fee shall be proportionately increased or reduced, as applicable, upon any change to the amount of the nine-one-one emergency wireless telephone fee as provided in subsection A of Section 2843.1 of Title 63 of the

Oklahoma Statutes. The increase or reduction shall be effective on the effective date of the change to the nine-one-one emergency wireless telephone fee as provided in subsection A of Section 2843.1 of Title 63 of the Oklahoma Statutes or, if later, the first day of the first calendar month to occur at least sixty (60) days after the enactment of the change. The Oklahoma Tax Commission shall provide not less than thirty (30) days advance notice of an increase or reduction on its public website.

H. Prepaid wireless nine-one-one fees collected by sellers shall be remitted to the Oklahoma Tax Commission at the times and in a manner provided for under the Oklahoma Sales Tax Code with respect to the sales tax imposed on prepaid wireless telecommunications services. The Oklahoma Tax Commission shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply under the Oklahoma Sales Tax Code.

I. A seller shall be permitted to deduct and retain three percent (3%) of the prepaid wireless nine-one-one fees collected from consumers.

J. The audit and appeal procedures, including limitations period, applicable to the Oklahoma Sales Tax Code shall apply to prepaid wireless nine-one-one fees.

K. The Oklahoma Tax Commission shall establish procedures by which a seller may document that a sale is not a retail transaction.

The procedures shall be in substantial conformity with the procedures for document sale for resale transactions under the Oklahoma Sales Tax Code. Within thirty (30) days of receipt, the Oklahoma Tax Commission shall pay all remitted prepaid wireless nine-one-one fees to each governing body, as defined in Section 2843 of Title 63 of the Oklahoma Statutes, which has imposed and is collecting the nine-one-one emergency wireless telephone fee as authorized in subsection A of Section 2843.1 of Title 63 of the Oklahoma Statutes as follows:

1. Ninety-eight percent (98%) of the revenue from the fee is hereby allocated to the governing bodies as defined in Section 2843 of Title 63 of the Oklahoma Statutes and shall be paid to the governing bodies. The share for each governing body shall be determined by dividing the population of the governing body by the total population of governing bodies where the fee authorized under subsection A of Section 2843.1 of Title 63 of the Oklahoma Statutes is imposed. The Oklahoma Tax Commission shall develop the formula on the basis of population residing within the governing body, as shown by the last preceding Federal Decennial Census or from the best information then available to the Commission when the information is not disclosed by the last preceding Federal Decennial Census; and

2. The remaining two percent (2%) of the revenue from the fee shall be retained by the Oklahoma Tax Commission to reimburse its

direct cost of administering the collection and remittance of prepaid wireless nine-one-one fees.

Notwithstanding paragraphs 1 and 2 of this subsection, in the fiscal year in which this act takes effect, prior to making the distributions provided in paragraphs 1 and 2 of this subsection, the Oklahoma Tax Commission shall retain an amount not to exceed Three Hundred Thousand Dollars ($300,000.00) to cover programming and other one-time costs to implement a system to collect the prepaid wireless nine-one-one fees. Distributions to governing bodies that enact the wireless nine-one-one fee authorized under Section 2843.1 of Title 63 of the Oklahoma Statutes after the effective date of this act shall commence in the calendar quarter after which the Oklahoma Tax Commission has received at least one hundred twenty (120) days' written notice from the governing body of the imposition of the fee.

L. Money distributed by the Oklahoma Tax Commission to a governing body pursuant to paragraph 1 of subsection K 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.

M. The provisions of subsection C of Section 2817 of Title 63 of the Oklahoma Statutes shall apply to providers and sellers of prepaid wireless telecommunications service.

N. The prepaid wireless nine-one-one fee imposed by this section shall be the only nine-one-one funding obligation imposed with respect to prepaid wireless telecommunications services in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for nine-one-one funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

O. Money collected pursuant to 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 money remitted to the governing body 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 governing body to which the Oklahoma Tax Commission has remitted the prepaid wireless nine-one-one fees and that has established emergency wireless telephone service. The special wireless nine-one-one account may be the same account that is or was established by the governing body under subsection C of Section 2843.1 of Title 63 of the Oklahoma Statutes. Amounts not used within a given year shall be carried forward.

P. 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.

SECTION 4. This act shall become effective January 1, 2011.

Passed the House of Representatives the 2nd day of March, 2010.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2010.

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Presiding Officer of the Senate