

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2556

6 By: Martin (Steve)

7 COMMITTEE SUBSTITUTE

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

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20
21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2843, as
23 last amended by Section 2, Chapter 353, O.S.L. 2007 (63 O.S. Supp.
24 2009, Section 2843), is amended to read as follows:

1 Section 2843. As used in the Nine-One-One Wireless Emergency
2 Number Act, unless the context otherwise requires:

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

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

17 3. "Nine-one-one wireless emergency telephone service" means
18 any telephone system whereby wireless telephone subscribers may
19 utilize a three-digit number, nine-one-one (911), for reporting an
20 emergency to the appropriate public agency providing law
21 enforcement, fire, medical, or other emergency services, including
22 ancillary communications systems and personnel necessary to pass the
23 reported emergency to the appropriate emergency service and which
24 the wireless service provider is required to provide pursuant to the

1 Federal Communications Commission Order 94-102 (961 Federal Register
2 40348);

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

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

10 6. "Person" means any service user, including any individual,
11 firm, partnership, copartnership, joint venture, association,
12 cooperative organization, private corporation, whether organized for
13 profit or not, fraternal organization, nonprofit organization,
14 estate, trust, business or common law trust, receiver, assignee for
15 the benefit of creditors, trustee or trustee in bankruptcy, the
16 United States of America, the state, any political subdivision of
17 the state or any federal or state agency, department, commission,
18 board, or bureau;

19 7. "Place of primary use" means+

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

1 ~~b. if the street address of the customer is not known,~~
2 ~~the billing address of the customer, if known,~~
3 ~~c. if neither the street address nor Oklahoma billing~~
4 ~~address of the customer is known, the wireless~~
5 ~~provider shall disclose to the substate planning~~
6 ~~district its chosen means to determine the~~
7 ~~customer's location for remittance purposes in~~
8 ~~accordance with the Mobile Telecommunications~~
9 ~~Sourcing Act, P.L. No. 106-252, codified at 4~~
10 ~~U.S.C. 116-126;~~

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

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

16 ~~9.~~ 10. "Public agency" means any city, town, county, municipal
17 corporation, public district, public trust, substate planning
18 district, or public authority located within this state which
19 provides or has authority to provide fire fighting, law enforcement,
20 ambulance, emergency medical, or other emergency services;

21 ~~10.~~ 11. "Substate planning district" means the following
22 organizations:

23 a. Association of Central Oklahoma Governments (ACOG),
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- 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:

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

7 ~~12.~~ 13. "Wireless telecommunications connection" means the ten-
8 digit access number assigned to a customer regardless of whether
9 more than one such number is aggregated for the purpose of billing a
10 service user.

11 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2843.1, as
12 last amended by Section 3, Chapter 353, O.S.L. 2007 (63 O.S. Supp.
13 2009, Section 2843.1), is amended to read as follows:

14 Section 2843.1 A. To provide for processing nine-one-one
15 emergency wireless calls, the board of county commissioners of a
16 county may by resolution submit to the voters of the county the
17 question of the imposition of a nine-one-one emergency wireless
18 telephone fee for each wireless connection, excluding a connection
19 for prepaid wireless telecommunications services, in the county as
20 determined by the subscriber's place of primary use. The resolution
21 shall include the amount of the fee which shall be fifty cents
22 (\$0.50) per month for each wireless connection, and shall call for
23 an election to be held within one (1) year from the date the
24 resolution is adopted. If a majority of the votes cast in an

1 election held approve the imposition of an emergency telephone fee,
2 the fee shall be imposed. A political subdivision may not impose
3 another fee on a wireless service provider or subscriber for nine-
4 one-one emergency service. The proceeds of the fee shall be
5 utilized to pay for the operation of emergency wireless telephone
6 service as specified in this section. Prepaid wireless
7 telecommunications services shall be subject only to the fees as set
8 forth in Section 3 of this act.

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

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1 C. Money collected under subsection B of this section shall be
2 used only for services related to nine-one-one emergency wireless
3 telephone services, including automatic number identification and
4 automatic location information services. The substate planning
5 districts shall distribute the money collected for each county which
6 has approved the emergency wireless telephone fee to each public
7 agency within that county which has established emergency wireless
8 telephone service or has sent a written request for installation,
9 maintenance, and operation of an emergency wireless telephone
10 service to a wireless service provider. The money remitted to the
11 public agency and any other money collected to fund the emergency
12 wireless telephone system shall be deposited in a special wireless
13 nine-one-one account established by the substate planning district.
14 From the emergency wireless telephone fee, the substate planning
15 districts shall distribute to other public agencies in the county
16 their proportionate share attributable to emergency wireless
17 telephone services as determined by at least an annual census of
18 wireless users provided by the wireless service provider. All
19 wireless user information provided by a wireless service provider
20 shall be deemed proprietary and is not subject to disclosure to the
21 public or any other party. Remittance of the fee to a public agency
22 may begin at any time if an existing emergency wireless telephone
23 service is already operative or upon written request by the local
24 governing body to the provider for installation, maintenance, and

1 operation of a nine-one-one emergency wireless telephone service and
2 related equipment. Amounts not used within a given year shall be
3 carried forward.

4 D. Every billed service user shall be liable for any emergency
5 wireless telephone fee imposed pursuant to this section until it has
6 been paid to the wireless service provider. ~~As of the effective~~
7 ~~date of this section, each prepaid wireless service provider shall~~
8 ~~remit the emergency wireless telephone fee for its prepaid wireless~~
9 ~~customers in accordance with either of the following methods:~~

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

13 2. ~~If it is not technically feasible for the prepaid wireless~~
14 ~~service provider to deduct the emergency wireless telephone fee from~~
15 ~~an active account, the prepaid wireless service provider shall pay~~
16 ~~the fee for each active prepaid account and seek reimbursement using~~
17 ~~whatever means are available to the provider.~~

18 E. The duty to collect any emergency wireless telephone fee
19 imposed pursuant to the authority of the Nine-One-One Wireless
20 Emergency Number Act from a service user shall commence ~~within sixty~~
21 ~~(60) days~~ on the first day of the calendar quarter following the
22 date that a wireless service provider receives notice from a local
23 county which shall be at least sixty (60) days from the date that
24 the voters in a county have approved the fee, the amount of such fee

1 and the address to which the fee should be remitted. Fees imposed
2 pursuant to this section that are required to be collected by the
3 wireless service provider may be added to and shall be stated
4 separately in any billings to the service user.

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

18 G. Any emergency wireless telephone fee imposed pursuant to the
19 authority provided by this section shall be collected insofar as
20 practicable at the same time as, and along with, the charges for
21 wireless telephone service in accordance with the regular billing
22 practice of the wireless telephone service. ~~If the customer has~~
23 ~~prepaid for wireless telephone service, the wireless service~~
24 ~~provider shall remit the emergency wireless telephone fee in~~

1 ~~accordance with subsection D of this section.~~ However, if the
2 public agency has not deployed nine-one-one emergency wireless
3 telephone service within twenty-four (24) months or thirty-six (36)
4 months for counties with a population of less than thirty thousand
5 (30,000), from the initial collection of the fee under subsection B
6 of this section, the collection of the fee may be suspended until
7 such service is deployed. A wireless service provider is not liable
8 for failing to suspend collection of a fee.

9 H. Nothing in the Nine-One-One Wireless Emergency Number Act
10 shall be construed to limit the ability of a wireless service
11 provider from recovering its costs associated with designing,
12 developing, deploying, and maintaining wireless enhanced nine-one-
13 one service directly from the customers of the provider, whether the
14 costs are itemized on the bill of the wireless customer as a
15 surcharge or by any other lawful means.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2843.2 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

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

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

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

4 3. "Provider" means a person that provides prepaid wireless
5 telecommunications service pursuant to a license issued by the
6 Federal Communications Commission;

7 4. "Retail transaction" means the purchase of prepaid wireless
8 telecommunications service from a seller for any purpose other than
9 for resale; and

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

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

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

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

1 location of the seller shall be treated as occurring in this state
2 if that business location is in this state. Any other retail
3 transaction shall be treated as occurring in this state if the
4 retail transaction is treated as occurring in this state for the
5 purposes of paragraph 5 of subsection A of Section 1354.27 of Title
6 68 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

3 Notwithstanding paragraphs 1 and 2 of this subsection, in the
4 fiscal year in which this act takes effect, prior to making the
5 distributions provided in paragraphs 1 and 2 of this subsection, the
6 Oklahoma Tax Commission shall retain an amount not to exceed Ten
7 Thousand Dollars (\$10,000.00) to cover programming and other one-
8 time costs to implement a system to collect the prepaid wireless
9 nine-one-one fees. Distributions to governing bodies that enact the
10 wireless nine-one-one fee authorized under Section 2843.1 of Title
11 63 of the Oklahoma Statutes after the effective date of this act
12 shall commence in the calendar quarter after which the Oklahoma Tax
13 Commission has received at least one hundred twenty (120) days'
14 written notice from the governing body of the imposition of the fee.

15 L. Money distributed by the Oklahoma Tax Commission to a
16 governing body pursuant to paragraph 1 of subsection K of this
17 section shall be used only for services related to nine-one-one
18 emergency wireless telephone services, including automatic number
19 identification and automatic location information services.

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

23 N. The prepaid wireless nine-one-one fee imposed by this
24 section shall be the only nine-one-one funding obligation imposed

1 with respect to prepaid wireless telecommunications services in this
2 state, and no tax, fee, surcharge, or other charge shall be imposed
3 by this state, any political subdivision of this state, or any
4 intergovernmental agency, for nine-one-one funding purposes, upon
5 any provider, seller, or consumer with respect to the sale,
6 purchase, use, or provision of prepaid wireless telecommunications
7 service.

8 O. Money collected pursuant to this section shall be used only
9 for services related to nine-one-one emergency wireless telephone
10 services, including automatic number identification and automatic
11 location information services. The money remitted to the governing
12 body and any other money collected to fund the emergency wireless
13 telephone system shall be deposited in a special wireless nine-one-
14 one account established by the governing body to which the Oklahoma
15 Tax Commission has remitted the prepaid wireless nine-one-one fees
16 and that has established emergency wireless telephone service. The
17 special wireless nine-one-one account may be the same account that
18 is or was established by the governing body under subsection C of
19 Section 2843.1 of Title 63 of the Oklahoma Statutes. Amounts not
20 used within a given year shall be carried forward.

21 P. All wireless user information provided by a wireless service
22 provider shall be deemed proprietary and is not subject to
23 disclosure to the public or any other party.

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

52-2-10084 CJB 02/24/10