

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2556

By: Martin (Steve)

4
5
6 AS INTRODUCED

7
8 An Act relating to emergency telephone services;
9 amending 63 O.S. 2001, Sections 2843, as last amended
10 by Section 2, Chapter 353, O.S.L. 2007 and 2843.1, as
11 last amended by Section 3, Chapter 353, O.S.L. 2007
12 (63 O.S. Supp. 2009, Sections 2843 and 2843.1), which
13 relate to the Nine-One-One Wireless Emergency Number
14 Act; modifying definition; adding definition;
15 excluding prepaid wireless telecommunication services
16 from certain wireless telephone fee; making prepaid
17 wireless telecommunication services subject to
18 certain fee; modifying duty to collect an emergency
19 wireless telephone fee; providing definitions;
20 imposing a prepaid wireless nine-one-one fee of
21 certain amount; requiring seller to collect the fee;
22 requiring certain disclosure of the fee; providing
23 for treatment of a retail transaction; making the
24 consumer liable for payment of the fee; requiring the
seller to remit the fees; excluding the fee from
calculation of certain taxes; providing for an
increase or reduction in the fee upon change in the
nine-one-one emergency wireless telephone fee;
providing for an effective date of a change in the
fee; requiring certain notice from the Oklahoma Tax
Commission; providing for remittance of the fee in a
certain manner; directing the Oklahoma Tax Commission
to establish registration and payment procedures;
allowing the seller to retain certain percentage of
the fee; providing for application of certain audit
and appeal procedures; directing the Oklahoma Tax
Commission to establish certain procedures; directing
the Oklahoma Tax Commission to remit the fee to
certain governing bodies; specifying amount of
revenue to be remitted to certain governing bodies;
providing formula for calculating the share for each

1 governing body; authorizing the Oklahoma Tax
2 Commission to retain certain percentage for
3 administrative and one-time costs; restricting use of
4 fees; providing for application of certain law;
5 prohibiting the imposition of another prepaid
6 wireless telecommunication service fee by a political
7 subdivision or other entity; restricting use of the
8 money collected from fee by the governing body;
9 requiring money to be deposited in a special account;
10 allowing deposit in an account established for
11 certain purpose; allowing funds to be carried
12 forward; declaring certain wireless user information
13 to be proprietary; providing for codification; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2843, as
17 last amended by Section 2, Chapter 353, O.S.L. 2007 (63 O.S. Supp.
18 2009, Section 2843), is amended to read as follows:

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

21 1. "Area served" means the geographic area which shall be
22 served by the emergency telephone service provided by the governing
23 body of a county, municipality, part of a county or combination of
24 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

1 as provided in subsection G of Section 2815 of this title. Any such
2 combined administering board shall be formed and shall enter into an
3 agreement with the governing body of each entity in accordance with
4 the Interlocal Cooperation Act. The agreement shall be filed with
5 the office of the county clerk and in the offices of each
6 governmental entity involved;

7 3. "Nine-one-one wireless emergency telephone service" means
8 any telephone system whereby wireless telephone subscribers may
9 utilize a three-digit number, nine-one-one (911), for reporting an
10 emergency to the appropriate public agency providing law
11 enforcement, fire, medical, or other emergency services, including
12 ancillary communications systems and personnel necessary to pass the
13 reported emergency to the appropriate emergency service and which
14 the wireless service provider is required to provide pursuant to the
15 Federal Communications Commission Order 94-102 (961 Federal Register
16 40348);

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

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

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1 6. "Person" means any service user, including any individual,
2 firm, partnership, copartnership, joint venture, association,
3 cooperative organization, private corporation, whether organized for
4 profit or not, fraternal organization, nonprofit organization,
5 estate, trust, business or common law trust, receiver, assignee for
6 the benefit of creditors, trustee or trustee in bankruptcy, the
7 United States of America, the state, any political subdivision of
8 the state or any federal or state agency, department, commission,
9 board, or bureau;

10 7. "Place of primary use" means:

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

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

18 c. ~~if neither the street address nor Oklahoma billing~~
19 ~~address of the customer is known, the wireless~~
20 ~~provider shall disclose to the substate planning~~
21 ~~district its chosen means to determine the~~
22 ~~customer's location for remittance purposes in~~
23 ~~accordance with the Mobile Telecommunications~~

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1 Sourcing Act, P.L. No. 106-252, codified at 4
2 U.S.C. 116-126;

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

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

8 ~~9.~~ 10. "Public agency" means any city, town, county, municipal
9 corporation, public district, public trust, substate planning
10 district, or public authority located within this state which
11 provides or has authority to provide fire fighting, law enforcement,
12 ambulance, emergency medical, or other emergency services;

13 ~~10.~~ 11. "Substate planning district" means the following
14 organizations:

- 15 a. Association of Central Oklahoma Governments (ACOG),
- 16 b. Association of South Central Oklahoma Governments
17 (ASCOG),
- 18 c. Central Oklahoma Economic Development District
19 (COEDD),
- 20 d. Eastern Oklahoma Economic Development District
21 (EOEDD),
- 22 e. Grand Gateway Economic Development Association
23 (GGEDA),
- 24 f. Indian Nations Council of Governments (INCOG),

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

6 ~~11.~~ 12. "Wireless service provider" means a provider of
7 commercial mobile service under Section 332(d) of the
8 Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq.,
9 Federal Communications Commission rules, and the Omnibus Budget
10 Reconciliation Act of 1993, Pub. L. No. 103-66, and includes a
11 provider of wireless two-way communication service, radio-telephone
12 communications related to cellular telephone service, network radio
13 access lines or the equivalent, and personal communication service.
14 The term does not include a provider of:

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

21 ~~12.~~ 13. "Wireless telecommunications connection" means the ten-
22 digit access number assigned to a customer regardless of whether
23 more than one such number is aggregated for the purpose of billing a
24 service user.

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

4 Section 2843.1 A. To provide for processing nine-one-one
5 emergency wireless calls, the board of county commissioners of a
6 county may by resolution submit to the voters of the county the
7 question of the imposition of a nine-one-one emergency wireless
8 telephone fee for each wireless connection, excluding a connection
9 for prepaid wireless telecommunications services, in the county as
10 determined by the subscriber's place of primary use. The resolution
11 shall include the amount of the fee which shall be fifty cents
12 (\$0.50) per month for each wireless connection, and shall call for
13 an election to be held within one (1) year from the date the
14 resolution is adopted. If a majority of the votes cast in an
15 election held approve the imposition of an emergency telephone fee,
16 the fee shall be imposed. A political subdivision may not impose
17 another fee on a wireless service provider or subscriber for nine-
18 one-one emergency service. The proceeds of the fee shall be
19 utilized to pay for the operation of emergency wireless telephone
20 service as specified in this section. Prepaid wireless
21 telecommunications services shall be subject only to the fees as set
22 forth in Section 3 of this act.

23 B. A wireless service provider shall collect the emergency
24 wireless telephone fee in an amount equal to the amount approved as

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

14 C. Money collected under subsection B of this section shall be
15 used only for services related to nine-one-one emergency wireless
16 telephone services, including automatic number identification and
17 automatic location information services. The substate planning
18 districts shall distribute the money collected for each county which
19 has approved the emergency wireless telephone fee to each public
20 agency within that county which has established emergency wireless
21 telephone service or has sent a written request for installation,
22 maintenance, and operation of an emergency wireless telephone
23 service to a wireless service provider. The money remitted to the
24 public agency and any other money collected to fund the emergency

1 wireless telephone system shall be deposited in a special wireless
2 nine-one-one account established by the substate planning district.
3 From the emergency wireless telephone fee, the substate planning
4 districts shall distribute to other public agencies in the county
5 their proportionate share attributable to emergency wireless
6 telephone services as determined by at least an annual census of
7 wireless users provided by the wireless service provider. All
8 wireless user information provided by a wireless service provider
9 shall be deemed proprietary and is not subject to disclosure to the
10 public or any other party. Remittance of the fee to a public agency
11 may begin at any time if an existing emergency wireless telephone
12 service is already operative or upon written request by the local
13 governing body to the provider for installation, maintenance, and
14 operation of a nine-one-one emergency wireless telephone service and
15 related equipment. Amounts not used within a given year shall be
16 carried forward.

17 D. Every billed service user shall be liable for any emergency
18 wireless telephone fee imposed pursuant to this section until it has
19 been paid to the wireless service provider. ~~As of the effective~~
20 ~~date of this section, each prepaid wireless service provider shall~~
21 ~~remit the emergency wireless telephone fee for its prepaid wireless~~
22 ~~customers in accordance with either of the following methods:~~

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

4 ~~2. If it is not technically feasible for the prepaid wireless~~
5 ~~service provider to deduct the emergency wireless telephone fee from~~
6 ~~an active account, the prepaid wireless service provider shall pay~~
7 ~~the fee for each active prepaid account and seek reimbursement using~~
8 ~~whatever means are available to the provider.~~

9 E. The duty to collect any emergency wireless telephone fee
10 imposed pursuant to the authority of the Nine-One-One Wireless
11 Emergency Number Act from a service user shall commence ~~within sixty~~
12 ~~(60) days~~ on the first day of the calendar quarter following the
13 date that a wireless service provider receives notice from a local
14 county which shall be at least sixty (60) days from the date that
15 the voters in a county have approved the fee, the amount of such fee
16 and the address to which the fee should be remitted. Fees imposed
17 pursuant to this section that are required to be collected by the
18 wireless service provider may be added to and shall be stated
19 separately in any billings to the service user.

20 F. The wireless service provider shall have no obligation to
21 take any legal action to enforce the collection of any emergency
22 wireless telephone fee imposed pursuant to the authority of this
23 section; however, should any service user tender a payment
24 insufficient to satisfy all charges, tariffs, fees, and taxes for

1 wireless telephone service, the amount tendered shall be credited to
2 the nine-one-one emergency wireless telephone fee in the same manner
3 as other taxes and fees. The wireless service provider shall at
4 least annually provide the governing body with a list of amounts
5 uncollected along with the names and addresses of those service
6 users who carry a balance that can be determined by the wireless
7 service provider to be nonpayment of any fee imposed pursuant to the
8 authority of this section.

9 G. Any emergency wireless telephone fee imposed pursuant to the
10 authority provided by this section shall be collected insofar as
11 practicable at the same time as, and along with, the charges for
12 wireless telephone service in accordance with the regular billing
13 practice of the wireless telephone service. ~~If the customer has~~
14 ~~prepaid for wireless telephone service, the wireless service~~
15 ~~provider shall remit the emergency wireless telephone fee in~~
16 ~~accordance with subsection D of this section.~~ However, if the
17 public agency has not deployed nine-one-one emergency wireless
18 telephone service within twenty-four (24) months or thirty-six (36)
19 months for counties with a population of less than thirty thousand
20 (30,000), from the initial collection of the fee under subsection B
21 of this section, the collection of the fee may be suspended until
22 such service is deployed. A wireless service provider is not liable
23 for failing to suspend collection of a fee.

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1 H. Nothing in the Nine-One-One Wireless Emergency Number Act
2 shall be construed to limit the ability of a wireless service
3 provider from recovering its costs associated with designing,
4 developing, deploying, and maintaining wireless enhanced nine-one-
5 one service directly from the customers of the provider, whether the
6 costs are itemized on the bill of the wireless customer as a
7 surcharge or by any other lawful means.

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

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

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

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

18 3. "Provider" means a person that provides prepaid wireless
19 telecommunications service pursuant to a license issued by the
20 Federal Communications Commission;

21 4. "Retail transaction" means the purchase of prepaid wireless
22 telecommunications service from a seller for any purpose other than
23 for resale; and
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1 5. "Seller" means a person who sells prepaid wireless
2 telecommunications service to another person.

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

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

14 D. For purposes of subsection C of this section, a retail
15 transaction that is effected in person by a consumer at a business
16 location of the seller shall be treated as occurring in this state
17 if that business location is in this state. Any other retail
18 transaction shall be treated as occurring in this state if the
19 retail transaction is treated as occurring in this state for the
20 purposes of paragraph 5 of subsection A of Section 1354.27 of Title
21 68 of the Oklahoma Statutes.

22 E. The prepaid wireless nine-one-one fee is the liability of
23 the consumer and not of the seller or of any provider, except that
24 the seller shall be liable to remit all prepaid wireless nine-one-

1 one fees that the seller collects from the consumer as provided for
2 in this section, including all charges that the seller is deemed to
3 collect where the amount of the fee has not been separately stated
4 on an invoice, receipt, or other similar document provided by the
5 consumer to the seller.

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

12 G. The prepaid wireless nine-one-one fee shall be
13 proportionately increased or reduced, as applicable, upon any change
14 to the amount of the nine-one-one emergency wireless telephone fee
15 as provided in subsection A of Section 2843.1 of Title 63 of the
16 Oklahoma Statutes. The increase or reduction shall be effective on
17 the effective date of the change to the nine-one-one emergency
18 wireless telephone fee as provided in subsection A of Section 2843.1
19 of Title 63 of the Oklahoma Statutes or, if later, the first day of
20 the first calendar month to occur at least sixty (60) days after the
21 enactment of the change. The Oklahoma Tax Commission shall provide
22 not less than thirty (30) days advance notice of an increase or
23 reduction on its public website.

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

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

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

15 K. The Oklahoma Tax Commission shall establish procedures by
16 which a seller may document that a sale is not a retail transaction.
17 The procedures shall be in substantial conformity with the
18 procedures for document sale for resale transactions under the
19 Oklahoma Sales Tax Code. Within thirty (30) days of receipt, the
20 Oklahoma Tax Commission shall pay all remitted prepaid wireless
21 nine-one-one fees to each governing body, as defined in Section 2843
22 of Title 63 of the Oklahoma Statutes, which has imposed and is
23 collecting the nine-one-one emergency wireless telephone fee as
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1 authorized in subsection A of Section 2843.1 of Title 63 of the
2 Oklahoma Statutes as follows:

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

16 2. The remaining two percent (2%) of the revenue from the fee
17 shall be retained by the Oklahoma Tax Commission to reimburse its
18 direct cost of administering the collection and remittance of
19 prepaid wireless nine-one-one fees.

20 Notwithstanding paragraphs 1 and 2 of this subsection, in the
21 fiscal year in which this act takes effect, prior to making the
22 distributions provided in paragraphs 1 and 2 of this subsection, the
23 Oklahoma Tax Commission shall retain an amount not to exceed
24 \$_____ to cover programming and other one-time costs to implement

1 a system to collect the prepaid wireless nine-one-one fees.
2 Distributions to governing bodies that enact the wireless nine-one-
3 one fee authorized under Section 2843.1 of Title 63 of the Oklahoma
4 Statutes after the effective date of this act shall commence in the
5 calendar quarter after which the Oklahoma Tax Commission has
6 received at least one hundred twenty (120) days' written notice from
7 the governing body of the imposition of the fee.

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

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

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

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

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

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

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