

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2252

By: Bingman

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5  
6 AS INTRODUCED

7 An Act relating to the Nine-One-One Wireless  
8 Emergency Number Act; amending 63 O.S. 2001, Section  
9 2843, as last amended by Section 2, Chapter 353,  
10 O.S.L. 2007 (63 O.S. Supp. 2009, Section 2843), which  
11 relates to definitions; modifying definitions;  
12 defining term; amending 63 O.S. 2001, Section 2843.1,  
13 as last amended by Section 3, Chapter 353, O.S.L.  
14 2007 (63 O.S. Supp. 2009, Section 2843.1), which  
15 relates to emergency wireless telephone fee; stating  
16 application for certain telephone devices; modifying  
17 procedures for payment of certain fees; establishing  
18 fee and stating procedures for certain prepaid  
19 wireless devices; providing for distribution of fees;  
20 stating purpose; providing for codification; and  
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2843, as  
24 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

1 body of a county, municipality, part of a county or combination of  
2 such governing bodies;

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

13 3. "Nine-one-one wireless emergency telephone service" means  
14 any telephone system whereby wireless telephone subscribers may  
15 utilize a three-digit number, nine-one-one (911), for reporting an  
16 emergency to the appropriate public agency providing law  
17 enforcement, fire, medical, or other emergency services, including  
18 ancillary communications systems and personnel necessary to pass the  
19 reported emergency to the appropriate emergency service and which  
20 the wireless service provider is required to provide pursuant to the  
21 Federal Communications Commission Order 94-102 (961 Federal Register  
22 40348);

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

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

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

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

20 8. "Place of primary use" means:

21 a. the street address representative of where the use of  
22 the mobile telecommunications service of the customer  
23 primarily occurs, which shall be the residential  
24

1 street address or the primary business street address  
2 of the customer, ~~if known,~~

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

5 ~~c. if neither the street address nor Oklahoma billing~~  
6 ~~address of the customer is known, the wireless~~  
7 ~~provider shall disclose to the substate planning~~  
8 ~~district its chosen means to determine the~~  
9 ~~customer's location for remittance purposes in~~  
10 ~~accordance with Title 4 of the United States Code,~~  
11 ~~the Mobile Telecommunications Sourcing Act;~~

12 ~~8.~~ 9. "Proprietary information" shall include subscriber,  
13 market share, cost and review information;

14 ~~9.~~ 10. "Public agency" means any city, town, county, municipal  
15 corporation, public district, public trust, substate planning  
16 district, or public authority located within this state which  
17 provides or has authority to provide fire fighting, law enforcement,  
18 ambulance, emergency medical, or other emergency services;

19 ~~10.~~ 11. "Substate planning district" means the following  
20 organizations:

- 21 a. Association of Central Oklahoma Governments (ACOG),
- 22 b. Association of South Central Oklahoma Governments
- 23 (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,

1           b. a communication channel used only for data  
2           transmission, or

3           c. a wireless roaming service or other nonlocal radio  
4           access line service; and

5       ~~12.~~ 13. "Wireless telecommunications connection" means the ten-  
6 digit access number assigned to a customer regardless of whether  
7 more than one such number is aggregated for the purpose of billing a  
8 service user.

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

12       Section 2843.1 A. To provide for processing nine-one-one  
13 emergency wireless calls, the board of county commissioners of a  
14 county may by resolution submit to the voters of the county the  
15 question of the imposition of a nine-one-one emergency wireless  
16 telephone fee for each wireless connection, other than a connection  
17 for prepaid wireless telecommunications service, in the county as  
18 determined by the subscriber's place of primary use. The resolution  
19 shall include the amount of the fee which shall be fifty cents  
20 (\$0.50) per month for each wireless connection, and shall call for  
21 an election to be held within one (1) year from the date the  
22 resolution is adopted. If a majority of the votes cast in an  
23 election held approve the imposition of an emergency telephone fee,  
24 the fee shall be imposed. A political subdivision may not impose

1 another fee on a wireless service provider or subscriber for nine-  
2 one-one emergency service. The proceeds of the fee shall be  
3 utilized to pay for the operation of emergency wireless telephone  
4 service as specified in this section. Prepaid wireless  
5 telecommunications service shall only be subject to the provisions  
6 of Section 2843.2 of this title.

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

22 C. Money collected under subsection B of this section shall be  
23 used only for services related to nine-one-one emergency wireless  
24 telephone services, including automatic number identification and

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

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

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

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

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

1 added to and shall be stated separately in any billings to the  
2 service user.

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

16 G. Any emergency wireless telephone fee imposed pursuant to the  
17 authority provided by this section shall be collected insofar as  
18 practicable at the same time as, and along with, the charges for  
19 wireless telephone service in accordance with the regular billing  
20 practice of the wireless telephone service. ~~If the customer has~~  
21 ~~prepaid for wireless telephone service, the wireless service~~  
22 ~~provider shall remit the emergency wireless telephone fee in~~  
23 ~~accordance with subsection D of this section.~~ However, if the  
24 public agency has not deployed nine-one-one emergency wireless

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

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

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

17 A. For the purposes of this section only, unless the context  
18 otherwise requires:

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

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

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

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

7 5. "Seller" means a person who sells prepaid wireless  
8 telecommunications service to another person.

9 B. There is hereby imposed a prepaid wireless nine-one-one fee  
10 of fifty cents (\$0.50) per retail transaction or, on and after the  
11 effective date of an adjusted amount per retail transaction that is  
12 established under subsection G of this section, such adjusted  
13 amount.

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

20 D. For purposes of subsection C of this section, a retail  
21 transaction that is effected in person by a consumer at a business  
22 location of the seller shall be treated as occurring in this state  
23 if that business location is in this state. Any other retail  
24 transaction shall be treated as occurring in this state if the

1 retail transaction is treated as occurring in this state for the  
2 purposes of paragraph 5 of subsection A of Section 1354.27 of Title  
3 68 of the Oklahoma Statutes.

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

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

18 G. The prepaid wireless nine-one-one fee shall be  
19 proportionately increased or reduced, as applicable, upon any change  
20 to the amount of the nine-one-one emergency wireless telephone fee  
21 as provided in subsection A of Section 2843.1 of Title 63 of the  
22 Oklahoma Statutes. Such increase or reduction shall be effective on  
23 the effective date of the change to the nine-one-one emergency  
24 wireless telephone fee as provided in subsection A of Section 2843.1

1 of Title 63 of the Oklahoma Statutes or, if later, the first day of  
2 the first calendar month to occur at least sixty (60) days after the  
3 enactment of such change. The Oklahoma Tax Commission shall provide  
4 not less than thirty (30) days advance notice of such increase or  
5 reduction on its public website.

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

13 I. A seller shall be permitted to deduct and retain one percent  
14 (1%) of prepaid wireless nine-one-one fees collected from consumers.

15 J. The audit and appeal procedures, including the limitations  
16 period, shall be subject to the Oklahoma Sales Tax Code.

17 K. The Tax Commission shall establish procedures by which a  
18 seller may document that a sale is not a retail transaction. Such  
19 procedures shall be in substantial conformity with the procedures  
20 for document sale for resale transactions under the Oklahoma Sales  
21 Tax Code.

22 L. Within thirty (30) days of receipt the Tax Commission shall  
23 pay all remitted prepaid wireless nine-one-one fees to each  
24 appropriate substate planning district as defined by Section 2843 of

1 Title 63 of the Oklahoma Statutes pursuant to a certified percentage  
2 of their proportionate population contained within their district  
3 boundaries. It shall be the duty and obligation of the substate  
4 planning district to distribute such fees to the qualified governing  
5 bodies in its region their proportionate share attributable to  
6 emergency wireless telephone services as determined by a formula.  
7 The formula shall be developed annually by the substate planning  
8 district on the basis of population residing within the governing  
9 body, as evidenced by the last preceding Federal Decennial Census,  
10 or from the best information then available to the governing board  
11 of the substate planning district when such information is not  
12 disclosed by the last preceding Federal Decennial Census, which has  
13 imposed and is collecting the fee authorized under Section 2843.1 of  
14 Title 63 of the Oklahoma Statutes.

15 1. Ninety-nine percent (99%) of such revenue is hereby  
16 allocated to the governing bodies as defined by Section 2843.1 of  
17 Title 63 of the Oklahoma Statutes and shall be paid to such  
18 governing bodies. Each governing body's share shall be determined  
19 by dividing the governing body's population by the total population  
20 of governing bodies where the fee authorized under Section 2843.1 of  
21 Title 63 of the Oklahoma Statutes is imposed. The substate planning  
22 district shall develop such formula on the basis of population  
23 residing within the governing body, as shown by the last preceding  
24 Federal Decennial Census.

1        2. The remaining one percent (1%) of such prepaid wireless  
2 nine-one-one fee revenue shall be retained by the substate planning  
3 district to reimburse its districts' cost of administering the  
4 collection and remittance of prepaid wireless nine-one-one fees.

5        3. Money distributed under subsection L of this section shall  
6 be used only for services related to nine-one-one emergency wireless  
7 telephone service, including automatic number identification and  
8 automatic location information services.

9        Distributions to governing bodies that enact the wireless nine-  
10 one-one fee authorized under Section 2843.1 of Title 63 of the  
11 Oklahoma Statutes, after the effective date of this act, shall  
12 commence in the calendar quarter after which the substate planning  
13 district has received at least one hundred twenty (120) days written  
14 notice from the public agency of the imposition of the fee  
15 authorized under Section 2843.1 of Title 63 of the Oklahoma  
16 Statutes.

17        M. The provisions of Section 2817 of Title 63 of the Oklahoma  
18 Statutes shall apply to providers and sellers of prepaid wireless  
19 telecommunication service.

20        N. The prepaid wireless nine-one-one fee imposed by this  
21 section shall be the only nine-one-one funding obligation imposed  
22 with respect to prepaid wireless telecommunications services in this  
23 state, and no tax, fee, surcharge, or other charge shall be imposed  
24 by this state, any political subdivision of this state, or any

1 | intergovernmental agency, for nine-one-one funding purposes, upon  
2 | any provider, seller, or consumer with respect to the sale,  
3 | purchase, use, or provision of prepaid wireless telecommunications  
4 | service.

5 |       O. Money collected under this section shall be used only for  
6 | services related to nine-one-one emergency wireless telephone  
7 | services, including automatic number identification and automatic  
8 | location information services. The money remitted to the public  
9 | agency and any other money collected to fund the emergency wireless  
10 | telephone system shall be deposited in a special wireless nine-one-  
11 | one account established by the public agency to which the substate  
12 | planning district has remitted the prepaid wireless nine-one-one  
13 | fees and that has established emergency wireless telephone service.  
14 | Such special wireless nine-one-one account may be the same account  
15 | that is or was established by the governing body under subsection C  
16 | of Section 2843.1 of Title 63 of the Oklahoma Statutes. All  
17 | wireless user information provided by a wireless service provider  
18 | shall be deemed proprietary and is not subject to disclosure to the  
19 | public or any other party. Amounts not used within a given year  
20 | shall be carried forward.

21 |       SECTION 4. This act shall become effective November 1, 2010.

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23 |       52-2-2706           MRB           1/14/2010 8:29:36 PM

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