

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 ENGROSSED HOUSE

4 BILL NO. 1595

By: Martin (Steve) of the House

5 and

6 Barrington of the Senate

7
8
9 An Act relating to emergency telephone service;
10 amending Section 3, Chapter 191, O.S.L. 2010 (63 O.S.
11 Supp. 2010, Section 2843.2), which relates to the
12 emergency pre-paid wireless telephone fee; updating
13 statutory citations; modifying entities eligible to
14 receive revenue from the fee; stating duty of
15 substate planning districts to hold revenue from the
16 fee; and changing how distribution of the revenue
17 from the fee is calculated.

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

19 SECTION 1. AMENDATORY Section 3, Chapter 191, O.S.L.
20 2010 (63 O.S. Supp. 2010, Section 2843.2), is amended to read as
21 follows:

22 Section 2843.2 A. As used in this section, unless the context
23 otherwise requires:

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

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 who 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 fifty cents (\$0.50) per retail transaction or, on and after the
14 effective date of an adjusted amount per retail transaction that is
15 established under subsection G of this section, the adjusted amount.

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

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

1 if that business location is in this state. Any other retail
2 transaction shall be sourced as follows:

3 1. When the retail transaction does not occur at a business
4 location of the seller, the retail transaction is sourced to the
5 location where receipt by the consumer, or the consumer's donee,
6 designated as such by the consumer, occurs, including the location
7 indicated by instructions for delivery to the consumer or donee,
8 known to the seller;

9 2. When the provisions of paragraph 1 of this subsection do not
10 apply, the sale is sourced to the location indicated by an address
11 for the consumer that is available from the business records of the
12 seller that are maintained in the ordinary course of the seller's
13 business when use of this address does not constitute bad faith;

14 3. When the provisions of paragraphs 1 and 2 of this subsection
15 do not apply, the sale is sourced to the location indicated by an
16 address for the consumer obtained during the consummation of the
17 sale, including the address of a consumer's payment instrument, if
18 no other address is available, when use of this address does not
19 constitute bad faith; and

20 4. When none of the previous rules of paragraphs 1, 2, and 3 of
21 this subsection apply, including the circumstance in which the
22 seller is without sufficient information to apply the previous
23 rules, then the location will be determined by the address from
24 which the service was provided, disregarding for these purposes any

1 location that merely provided the digital transfer of the product
2 sold. If the seller knows the mobile telephone number, the location
3 will be that which is associated with the mobile telephone number.

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 the consumer as provided for
8 in this section, including all charges that the seller is deemed to
9 collect where the amount of the fee has not been separately stated
10 on an invoice, receipt, or other similar document provided by the
11 consumer to the seller.

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 the 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~~ this title. The increase or reduction shall be
23 effective on the effective date of the change to the nine-one-one
24 emergency wireless telephone fee as provided in subsection A of

1 Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title or,
2 if later, the first day of the first calendar month to occur at
3 least sixty (60) days after the enactment of the change. The
4 Oklahoma Tax Commission shall provide not less than thirty (30)
5 days' advance notice of an increase or reduction on its public
6 website.

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

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

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

21 K. The Oklahoma Tax Commission shall establish procedures by
22 which a seller may document that a sale is not a retail transaction.
23 The procedures shall be in substantial conformity with the
24

1 procedures for document sale for resale transactions under the
2 Oklahoma Sales Tax Code.

3 L. Within thirty (30) days of receipt, the Oklahoma Tax
4 Commission shall pay all remitted prepaid wireless nine-one-one fees
5 to the governing bodies that the Statewide Nine-One-One Advisory
6 Board has certified as eligible to receive funds. ~~Such~~ The
7 certification shall be provided to the Oklahoma Tax Commission
8 annually before July 1. Eligible governing bodies shall be those
9 governing bodies that have imposed, and are collecting, the nine-
10 one-one emergency wireless telephone fee as authorized in subsection
11 A of Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title
12 or, for those counties that have not assessed a nine-one-one
13 emergency wireless telephone fee, the substate planning district
14 designated by that county. It shall be the duty and obligation of
15 the substate planning district to hold in a separate escrow account
16 all fees paid on behalf of counties in its region that have not
17 assessed a nine-one-one emergency wireless telephone fee pursuant to
18 Section 2843.1 of this title, until such time as the county votes to
19 assess the fee or develops wireless nine-one-one service pursuant to
20 Section 2849 of this title. ~~Such distribution~~ Distribution shall be
21 as follows:

22 1. Ninety-eight percent (98%) of the revenue from the fee is
23 hereby allocated to the governing bodies as defined in Section 2843
24 of ~~Title 63 of the Oklahoma Statutes~~ this title and shall be paid to

1 the governing bodies. The share for each governing body shall be
2 determined by dividing the population of the governing body by the
3 total population of ~~governing bodies where the fee authorized under~~
4 ~~subsection A of Section 2843.1 of Title 63 of the Oklahoma Statutes~~
5 ~~is imposed~~ the state. The Oklahoma Tax Commission shall develop the
6 formula on the basis of population residing within the governing
7 body, as shown by the latest available Federal Census estimates as
8 of July 1, or from the best information then available to the
9 Commission when the information is not available from the latest
10 available Federal Census; and

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

15 Notwithstanding paragraphs 1 and 2 of this subsection, in the
16 fiscal year in which this act takes effect, prior to making the
17 distributions provided in paragraphs 1 and 2 of this subsection, the
18 Oklahoma Tax Commission shall retain an amount not to exceed Three
19 Hundred Thousand Dollars (\$300,000.00) to cover programming and
20 other one-time costs to implement a system to collect the prepaid
21 wireless nine-one-one fees. Distributions to governing bodies that
22 enact the wireless nine-one-one fee authorized under Section 2843.1
23 of ~~Title 63 of the Oklahoma Statutes~~ this title after the effective
24 date of this act shall commence in the calendar quarter after which

1 the Oklahoma Tax Commission has received at least one hundred twenty
2 (120) days' written notice from the governing body of the imposition
3 of the fee.

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

9 N. The provisions of subsection C of Section 2817 of ~~Title 63~~
10 ~~of the Oklahoma Statutes~~ this title shall apply to providers and
11 sellers of prepaid wireless telecommunications service.

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

21 P. Money collected pursuant to this section shall be used only
22 for services related to nine-one-one emergency wireless telephone
23 services, including automatic number identification and automatic
24 location information services. The money remitted to the governing

1 body and any other money collected to fund the emergency wireless
2 telephone system shall be deposited in a special wireless nine-one-
3 one account established by the governing body to which the Oklahoma
4 Tax Commission has remitted the prepaid wireless nine-one-one fees
5 and that has established emergency wireless telephone service. The
6 special wireless nine-one-one account may be the same account that
7 is or was established by the governing body under subsection C of
8 Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title.
9 Amounts not used within a given year shall be carried forward.

10 Q. All wireless user information provided by a wireless service
11 provider shall be deemed proprietary and is not subject to
12 disclosure to the public or any other party.

13 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 4-7-11 - DO
14 PASS.

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