

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1502

By: Barrington

4
5 AS INTRODUCED

6 An Act relating to prepaid wireless telephone fees;
7 amending 63 O.S. 2011, Section 2843.2, which relates
8 to emergency prepaid wireless telephone fees;
9 modifying statutory language.

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

11 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2843.2, is
12 amended to read as follows:

13 Section 2843.2 A. As used in this ~~section~~ act, unless the
14 context otherwise requires:

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

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

20 3. "Provider" means a person who provides prepaid wireless
21 telecommunications service pursuant to a license issued by the
22 Federal Communications Commission;

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

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

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

13 D. For purposes of subsection C of this section, a retail
14 transaction that is effected in person by a consumer at a business
15 location of the seller shall be treated as occurring in this state
16 if that business location is in this state. Any other retail
17 transaction shall be sourced as follows:

18 1. When the retail transaction does not occur at a business
19 location of the seller, the retail transaction is sourced to the
20 location where receipt by the consumer, or the consumer's donee,
21 designated as such by the consumer, occurs, including the location
22 indicated by instructions for delivery to the consumer or donee,
23 known to the seller;

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

6 3. When the provisions of paragraphs 1 and 2 of this subsection
7 do not apply, the sale is sourced to the location indicated by an
8 address for the consumer obtained during the consummation of the
9 sale, including the address of a consumer's payment instrument, if
10 no other address is available, when use of this address does not
11 constitute bad faith; and

12 4. When none of the previous rules of paragraphs 1, 2, and 3 of
13 this subsection apply, including the circumstance in which the
14 seller is without sufficient information to apply the previous
15 rules, then the location will be determined by the address from
16 which the service was provided, disregarding for these purposes any
17 location that merely provided the digital transfer of the product
18 sold. If the seller knows the mobile telephone number, the location
19 will be that which is associated with the mobile telephone number.

20 E. The prepaid wireless nine-one-one fee is the liability of
21 the consumer and not of the seller or of any provider, except that
22 the seller shall be liable to remit all prepaid wireless nine-one-
23 one fees that the seller collects from the consumer as provided for
24 in this section, including all charges that the seller is deemed to

1 collect where the amount of the fee has not been separately stated
2 on an invoice, receipt, or other similar document provided by the
3 consumer to the seller.

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

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

21 H. Prepaid wireless nine-one-one fees collected by sellers
22 shall be remitted to the Oklahoma Tax Commission at the times and in
23 a manner provided for under the Oklahoma Sales Tax Code with respect
24 to the sales tax imposed on prepaid wireless telecommunications

1 services. The Oklahoma Tax Commission shall establish registration
2 and payment procedures that substantially coincide with the
3 registration and payment procedures that apply under the Oklahoma
4 Sales Tax Code.

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

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

11 K. The Oklahoma Tax Commission shall establish procedures by
12 which a seller may document that a sale is not a retail transaction.
13 The procedures shall be in substantial conformity with the
14 procedures for document sale for resale transactions under the
15 Oklahoma Sales Tax Code.

16 L. Within thirty (30) days of receipt, the Oklahoma Tax
17 Commission shall pay all remitted prepaid wireless nine-one-one fees
18 to the governing bodies that the Statewide Nine-One-One Advisory
19 Board has certified as eligible to receive funds. The certification
20 shall be provided to the Oklahoma Tax Commission annually before
21 July 1. Eligible governing bodies shall be those governing bodies
22 that have imposed, and are collecting, the nine-one-one emergency
23 wireless telephone fee as authorized in subsection A of Section
24 2843.1 of this title or, for those counties that have not assessed a

1 nine-one-one emergency wireless telephone fee, the substate planning
2 district designated by that county. It shall be the duty and
3 obligation of the substate planning district to hold in a separate
4 escrow account all fees paid on behalf of counties in its region
5 that have not assessed a nine-one-one emergency wireless telephone
6 fee pursuant to Section 2843.1 of this title, until such time as the
7 county votes to assess the fee or develops wireless nine-one-one
8 service pursuant to Section 2849 of this title. Distribution shall
9 be 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 this title and shall be paid to the governing bodies. The share
13 for each governing body shall be determined by dividing the
14 population of the governing body by the total population of the
15 state. The Oklahoma Tax Commission shall develop the formula on the
16 basis of population residing within the governing body, as shown by
17 the latest available Federal Census estimates as of July 1, or from
18 the best information then available to the Commission when the
19 information is not available from the latest available Federal
20 Census; and

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

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

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

18 N. The provisions of subsection C of Section 2817 of this title
19 shall apply to providers and sellers of prepaid wireless
20 telecommunications service.

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

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

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

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

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