

1 **SENATE FLOOR VERSION**

2 February 17, 2014

3 **AS AMENDED**

4 SENATE BILL NO. 1445

By: Paddack of the Senate

and

Billy of the House

5  
6  
7  
8 **[ 911 emergency services - Nine-One-One Wireless**  
9 **Emergency Number Act - certain rate - fee - vote of**  
10 **people - effective date ]**

11  
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2843, is  
14 amended to read as follows:

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

17 1. "Area served" means the geographic area which shall be  
18 served by the emergency telephone service provided by the governing  
19 body of a county, municipality, part of a county or combination of  
20 such governing bodies;

21 2. "Governing body" means the board of county commissioners of  
22 a county, the city council or other governing body of a  
23 municipality, or a combination of such boards, councils or other  
24 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;

24

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 the street address  
11 representative of where the use of the mobile telecommunications  
12 service of the customer primarily occurs, which shall be ~~the~~  
13 ~~residential street address or the primary business street address of~~  
14 ~~the customer and must be within the licensed service area of the~~  
15 ~~home service provider in accordance with ORS 68-55001 and the~~  
16 ~~federal Mobile Telecommunications Sourcing Act, P.L. No. 106-252,~~  
17 ~~codified at 4 U.S.C. 116-126~~ either the billing address of the  
18 customer responsible for making payment on the account, or the  
19 street address of the primary user of the telecommunications device.  
20 This determination shall be made by the customer upon establishing  
21 the account, and such determination shall be recorded by the  
22 wireless service provider for collection and payment purposes under  
23 subsection B of Section 2843.1 of this title;  
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1 8. "Prepaid wireless telecommunications service", as defined in  
2 paragraph 12 of Subsection A of Section 1354.30 of Title 68 of the  
3 Oklahoma Statutes, means a telecommunications wireless service that  
4 provides the right to utilize mobile wireless service as well as  
5 other non-telecommunications services, including the download of  
6 digital products delivered electronically, content and ancillary  
7 services, which must be paid for in advance that is sold in  
8 predetermined units or dollars of which the number declines with use  
9 in a known amount;

10 9. "Proprietary information" shall include subscriber, market  
11 share, cost and review information;

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

17 11. "Substate planning district" means the following  
18 organizations:

- 19 a. Association of Central Oklahoma Governments (ACOG),
  - 20 b. Association of South Central Oklahoma Governments  
21 (ASCOG),
  - 22 c. Central Oklahoma Economic Development District  
23 (COEDD),
- 24

- 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);

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

1 c. a wireless roaming service or other nonlocal radio  
2 access line service; and

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

7 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2843.1, is  
8 amended to read as follows:

9 Section 2843.1. A. To provide for processing nine-one-one  
10 emergency wireless calls, the board of county commissioners of a  
11 county may by resolution submit to the voters of the county the  
12 question of the imposition of a nine-one-one emergency wireless  
13 telephone fee for each wireless connection, excluding a connection  
14 for prepaid wireless telecommunications services, in the county as  
15 determined by the subscriber's place of primary use. The resolution  
16 shall include the amount of the fee which shall ~~be fifty cents~~  
17 ~~(\$0.50) per month for each wireless connection, and shall call for~~  
18 ~~an election to be held within one (1) year from the date the~~  
19 ~~resolution is adopted~~ not exceed five percent (5%) of the monthly  
20 base rate for a wireless telecommunications connection or prepaid  
21 wireless telecommunications service as defined in this act, and once  
22 approved by the voters following the effective date of this act,  
23 such fee may annually be adjusted by majority vote of the board of  
24 county commissioners to remain at not more than five percent (5%) of

1 the monthly base rate or to be increased by the annual rate of  
2 inflation, whichever is less. If a majority of the votes cast in an  
3 election held approve the imposition of an emergency telephone fee,  
4 the fee shall be imposed and may be annually adjusted pursuant to  
5 this subsection. A political subdivision may not impose another fee  
6 on a wireless service provider or subscriber for nine-one-one  
7 emergency service. The proceeds of the fee shall be utilized to pay  
8 for the maintenance and operation, including personnel costs, of  
9 emergency wireless telephone service as specified in this section.  
10 Prepaid wireless telecommunications services shall be subject only  
11 to the fees as set forth in Section ~~3~~ 2843.2 of this ~~act~~ title.

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

1 emergency wireless telephone system shall be deposited in a special  
2 wireless nine-one-one account established by the district.

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

1 service is already operative or upon written request by the local  
2 governing body to the provider for installation, maintenance, and  
3 operation of a nine-one-one emergency wireless telephone service and  
4 related equipment. Amounts not used within a given year shall be  
5 carried forward.

6 D. Every billed service user shall be liable for any emergency  
7 wireless telephone fee imposed pursuant to this section until it has  
8 been paid to the wireless service 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 on the first  
12 day of the calendar quarter following the date that a wireless  
13 service provider receives notice from a local county which shall be  
14 at least sixty (60) days from the date that the voters in a county  
15 have approved the fee, or the board of county commissioners has  
16 established an adjusted rate as provided in subsection A of this  
17 section, the amount of such fee and the address to which the fee  
18 should be remitted. Fees imposed pursuant to this section that are  
19 required to be collected by the wireless service provider may be  
20 added to and shall be stated separately in any billings to the  
21 service user.

22 F. The wireless service provider shall have no obligation to  
23 take any legal action to enforce the collection of any emergency  
24 wireless telephone fee imposed pursuant to the authority of this

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

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

23 H. Nothing in the Nine-One-One Wireless Emergency Number Act  
24 shall be construed to limit the ability of a wireless service

1 provider from recovering its costs associated with designing,  
2 developing, deploying, and maintaining wireless enhanced nine-one-  
3 one service directly from the customers of the provider, whether the  
4 costs are itemized on the bill of the wireless customer as a  
5 surcharge or by any other lawful means.

6 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2843.2, is  
7 amended to read as follows:

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

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

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

15 3. "Provider" means a person who provides prepaid wireless  
16 telecommunications service pursuant to a license issued by the  
17 Federal Communications Commission;

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

21 5. "Seller" means a person who sells prepaid wireless  
22 telecommunications service to another person.

23 B. There Upon approval of the voters as prescribed in  
24 subsection A of Section 2843.1 of this title, there is hereby

1 imposed a prepaid wireless nine-one-one fee ~~of fifty cents (\$0.50)~~  
2 not to exceed five percent (5%) of the monthly base rate per retail  
3 transaction or, on and after the effective date of an adjusted  
4 amount per retail transaction that is established under subsection G  
5 of this section, the adjusted amount and once established, the fee  
6 may be increased or decreased resulting in an adjusted rate as  
7 provided in subsection A of Section 2843.1 of this title and  
8 subsection G of this section.

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

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

20 1. When the retail transaction does not occur at a business  
21 location of the seller, the retail transaction is sourced to the  
22 location where receipt by the consumer, or the consumer's donee,  
23 designated as such by the consumer, occurs, including the location  
24

1 indicated by instructions for delivery to the consumer or donee,  
2 known to the seller;

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

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

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

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 this title. The  
16 increase or reduction shall be effective on the effective date of  
17 the change to the nine-one-one emergency wireless telephone fee as  
18 provided in subsection A of Section 2843.1 of this title or  
19 subsection E of Section 2843.1 of this title or, if later, the first  
20 day of the first calendar month to occur at least sixty (60) days  
21 after the enactment of the change. The Oklahoma Tax Commission  
22 shall provide not less than thirty (30) days' advance notice of an  
23 increase or reduction on its public website.

24

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.

20 L. Within thirty (30) days of receipt, the ~~Oklahoma~~ Tax  
21 Commission shall pay all remitted prepaid wireless nine-one-one fees  
22 to the governing bodies that the Statewide Nine-One-One Advisory  
23 Board has certified as eligible to receive funds. The certification  
24 shall be provided to the ~~Oklahoma~~ Tax Commission annually before

1 July 1. Eligible governing bodies shall be those governing bodies  
2 that have imposed, and are collecting, the nine-one-one emergency  
3 wireless telephone fee as authorized in subsection A of Section  
4 2843.1 of this title or, for those counties that have not assessed a  
5 nine-one-one emergency wireless telephone fee, the substate planning  
6 district designated by that county. It shall be the duty and  
7 obligation of the substate planning district to hold in a separate  
8 escrow account all fees paid on behalf of counties in its region  
9 that have not assessed a nine-one-one emergency wireless telephone  
10 fee pursuant to Section 2843.1 of this title, until such time as the  
11 county votes to assess the fee or develops wireless nine-one-one  
12 service pursuant to Section 2849 of this title. Distribution shall  
13 be as follows:

14 1. Ninety-eight percent (98%) of the revenue from the fee is  
15 hereby allocated to the governing bodies as defined in Section 2843  
16 of this title and shall be paid to the governing bodies. The share  
17 for each governing body shall be determined by dividing the  
18 population of the governing body by the total population of ~~the~~ the  
19 state. The ~~Oklahoma~~ Tax Commission shall develop the formula on the  
20 basis of population residing within the governing body, as shown by  
21 the latest available Federal Census estimates as of July 1, or from  
22 the best information then available to the Tax Commission when the  
23 information is not available from the latest available Federal  
24 Census; and

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

5           Notwithstanding paragraphs 1 and 2 of this subsection, in the  
6 fiscal year in which this act takes effect, prior to making the  
7 distributions provided in paragraphs 1 and 2 of this subsection, the  
8 ~~Oklahoma~~ Tax Commission shall retain an amount not to exceed Three  
9 Hundred Thousand Dollars (\$300,000.00) to cover programming and  
10 other one-time costs to implement a system to collect the prepaid  
11 wireless nine-one-one fees. Distributions to governing bodies that  
12 enact the wireless nine-one-one fee authorized under Section 2843.1  
13 of this title after ~~the effective date of this act~~ January 1, 2011,  
14 shall commence in the calendar quarter after which the ~~Oklahoma~~ Tax  
15 Commission has received at least one hundred twenty (120) days'  
16 written notice from the governing body of the imposition of the fee.

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

22           N. The provisions of subsection C of Section 2817 of this title  
23 shall apply to providers and sellers of prepaid wireless  
24 telecommunications service.

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

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

23

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

4 SECTION 4. This act shall become effective September 1, 2014.

5 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
6 February 17, 2014 - DO PASS AS AMENDED  
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