

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1789 Session of
2009

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, JANUARY 25, 2010

AN ACT

1 Amending the act of July 9, 1990 (P.L.340, No.78), entitled "An
2 act providing for a Statewide emergency telephone number 911
3 system; providing for contributions from telephone
4 subscribers; providing a penalty; and making a repeal,"
5 further providing for definitions and for Wireless E-911
6 Emergency Services Fund; and imposing a prepaid wireless
7 E-911 surcharge.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2 of the act of July 9, 1990 (P.L.340,
11 No.78), known as the Public Safety Emergency Telephone Act,
12 amended December 30, 2003 (P.L.384, No.56) and July 9, 2008
13 (P.L.948, No.72), is amended to read:

14 Section 2. Definitions.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "911 emergency communication system" or "911 system." A
5 system, including enhanced 911 service but excluding a wireless
6 E-911 system, which permits a person dialing 911 by telephone to
7 be connected to a public safety answering point, via normal
8 telephone facilities, for the reporting of police, fire, medical
9 or other emergency situations.

10 ["Active prepaid wireless account." A prepaid wireless
11 account that has been used by the customer during the month to
12 complete a telephone call for which the customer's card or
13 account was reduced.]

14 "Advisory committee." The wireless E-911 Emergency Services
15 Advisory Committee established in section 11.3.

16 "Agency." The Pennsylvania Emergency Management Agency.

17 "Associated with Pennsylvania."

18 (1) In the case of the mobile telephone number (MTN),
19 the geographical location associated with the first six
20 digits or NPA/NXX of the MTN; or

21 (2) in the case of a customer service address, the
22 physical location of the address.

23 "Automatic location information" or "ALI." The delivery or
24 receipt of the street address of the telephone or the geographic
25 location of the wireless device, as specified in the FCC E-911
26 Order, being used to place a call to a 911 system or to a
27 wireless E-911 system.

28 "Automatic number identification" or "ANI." The delivery or
29 receipt of the telephone number assigned to the telephone or
30 wireless device being used to place a call to a 911 system or to

1 a wireless E-911 system.

2 "Commission." The Pennsylvania Public Utility Commission.

3 "Competitive local exchange carrier." A local exchange
4 carrier that has been certificated as a competitive local
5 exchange carrier by the Pennsylvania Public Utility Commission.

6 "Consumer." A person who purchases prepaid wireless
7 telecommunications service OR A PREPAID WIRELESS DEVICE in a ←
8 retail transaction.

9 "Contribution rate." A fee assessed against a telephone
10 subscriber for the nonrecurring costs, maintenance and operating
11 costs of a 911 system. Counties of the first through second
12 class A may impose a monthly contribution rate in an amount not
13 to exceed \$1 per line on each local exchange access line.
14 Counties of the third through fifth class may impose monthly
15 contribution rates in an amount not to exceed \$1.25 per line on
16 each local exchange access line. Counties of the sixth through
17 eighth class may impose a monthly contribution rate in an amount
18 not to exceed \$1.50 per line on each local exchange access line.
19 The contribution rate may be used by counties for the expenses
20 of implementing, expanding or upgrading a 911 system. Expenses
21 eligible for reimbursement through the contribution rate shall
22 include telephone terminal equipment, trunk line service
23 installation, network changes, building of initial data base and
24 any other nonrecurring costs to establish a 911 system. The
25 contribution rate may also be used to fund recurring costs
26 pursuant to section 8(b). Expenses not eligible for
27 reimbursement through the contribution rate shall include
28 purchase of real estate, cosmetic remodeling, central office
29 upgrades, hiring of dispatchers, ambulances, fire engines or
30 other emergency vehicles, utilities, taxes and other expenses as

1 determined by the Pennsylvania Emergency Management Agency.

2 "Council." The Pennsylvania Emergency Management Council.

3 "County." The term shall include a city of the first class
4 coterminous with a county.

5 "County plan." A document submitted by the county on a
6 triennial basis to the Pennsylvania Emergency Management Agency,
7 outlining its proposed and existing wireline and wireless 911
8 and enhanced 911 systems and procedures, including a
9 contribution rate, for the forthcoming three years.

10 "Emergency notification services." Services provided by
11 authorized agencies of Federal, State, county or local
12 governments, or by persons authorized by such governments, that
13 notify the public, using ANI/ALI data base information, of
14 emergencies declared by such governments.

15 "Emergency support services." Information or data base
16 management services provided by authorized agencies of Federal,
17 State, county or local governments, or by persons authorized by
18 such governments, that are used in support of PSAPs or emergency
19 notification services.

20 "Enhanced 911 service" or "E-911." Emergency telephone
21 service providing for automatic identification of caller
22 location and calling number.

23 "FCC E-911 Order." All orders issued by the Federal
24 Communications Commission pursuant to the proceeding entitled
25 "Revision of the Commission's Rules to Ensure Compatibility with
26 Enhanced 911 Emergency Calling Systems" (CC Docket No. 94-102)
27 codified at 47 CFR 20.18 (relating to 911 Service), any
28 successor proceeding and any other FCC order that affects the
29 provision of wireless E-911 service to wireless service
30 customers.

1 "Fund." The Wireless E-911 Emergency Services Fund
2 established in section 11.4.

3 "Interconnected Voice over Internet Protocol service
4 customer" or "VoIP service customer." A person who is billed by
5 an interconnected Voice over Internet Protocol provider, is the
6 end user of VoIP service and who has designated a primary place
7 of use within this Commonwealth.

8 "Interconnected Voice over Internet Protocol provider" or
9 "VoIP provider." A person engaged in the business of providing
10 VoIP service to end-use customers in this Commonwealth,
11 including resellers.

12 "Interconnected Voice over Internet Protocol service" or
13 "VoIP service." Service as defined by all orders issued by the
14 Federal Communications Commission pursuant to the proceeding
15 entitled "IP-Enabled Services", (WC Docket No. 04-36; FCC
16 05-116), codified at 47 CFR Part 9 (relating to interconnected
17 Voice over Internet Protocol services), any successor proceeding
18 and any other FCC order that affects the provision of 911
19 service or E-911 service to VoIP service customers or further
20 defines interconnected Voice over Internet Protocol service.

21 "Interexchange carrier." A person that is authorized by the
22 Pennsylvania Public Utility Commission to provide long-distance
23 telecommunications service.

24 "Local exchange carrier." A person, including a competitive
25 local exchange carrier, that is authorized by the Pennsylvania
26 Public Utility Commission to provide local exchange
27 telecommunications service or exchange access.

28 "Local exchange telephone service." The provision of
29 telephonic message transmission within an exchange, as such is
30 defined and described in tariffs filed with and approved by the

1 commission.

2 "Mobile telephone number" or "MTN." The telephone number
3 assigned to a wireless telephone at the time of initial
4 activation.

5 "NPA-NXX." The first six digits of a ten-digit telephone
6 number, including a mobile telephone number, representing the
7 area code and exchange of the telephone number.

8 "Person." The term includes a corporation, a partnership, an
9 association, the Federal Government, the State government, a
10 political subdivision, a municipal or other local authority, as
11 well as a natural person.

12 "PREPAID WIRELESS DEVICE." A WIRELESS TELEPHONE THAT IS
13 PURCHASED STRICTLY FOR THE PURPOSE OF INITIATING A PREPAID
14 CALLING SERVICE AND DOES NOT INCLUDE TRADITIONAL WIRELESS
15 DEVICES USED FOR MONTHLY CALLING PLANS.



16 "Prepaid wireless E-911 surcharge." The charge that is
17 required to be collected by a seller from a consumer in the
18 amount established under section 11.4(b.1).

19 "Prepaid wireless provider." A person that provides prepaid
20 wireless telecommunications service pursuant to a license issued
21 by the Federal Communications Commission.

22 "Prepaid wireless [telephone] telecommunications service." A
23 wireless [telephone service which is activated in advance by
24 payment of a finite dollar amount or for a finite set of minutes
25 and which, unless an additional finite dollar amount or finite
26 set of minutes is paid in advance, terminates either upon use by
27 a customer and delivery by the wireless carrier of an agreed-
28 upon amount of service corresponding to the total dollar amount
29 paid in advance or within a certain period of time following
30 initial purchase or activation] telecommunications service that

1 allows a caller to dial 911 to access the 911 system, which
2 service must be paid for in advance and is sold in predetermined
3 units or dollars of which the number declines MAY OR MAY NOT ←
4 DECLINE with use in a known amount.

5 "Primary place of use." The street address representative of
6 where the customer's use of the VoIP service primarily occurs.
7 For the purpose of VoIP 911 fees, primary place of use is the
8 customer's registered location on the date the customer is
9 billed.

10 "Public agency." The Commonwealth or a political
11 subdivision, public authority, municipal authority or any
12 organization located in whole or in part within this
13 Commonwealth which provides or has the authority to provide
14 firefighting, law enforcement, ambulance, emergency medical or
15 other emergency services.

16 "Public safety answering point" or "PSAP." The agency-
17 approved first point at which calls for emergency assistance
18 from individuals are answered, operated 24 hours a day.

19 "Retail transaction." The purchase of prepaid wireless
20 telecommunications service OR A PREPAID WIRELESS DEVICE from a ←
21 seller for any purpose other than resale.

22 "Seller." A person who sells prepaid wireless
23 telecommunications service OR A PREPAID WIRELESS DEVICE to ←
24 another person.

25 ["Sufficient positive balance." A dollar amount greater than
26 or equal to the monthly wireless surcharge amount.]

27 "Telecommunications carrier." Any provider of
28 telecommunications services as defined by the Telecommunications
29 Act of 1996 (Public Law 104-104, 110 Stat. 56).

30 "Telephone subscriber." A person who contracts with a local

1 exchange carrier within this Commonwealth for local exchange
2 telephone service, either residential or commercial. When the
3 same person has several telephone dial tone access lines, each
4 dial tone access line shall constitute a separate subscription.
5 For purposes of the contribution rate, the term shall not
6 include pay stations owned or operated by a regulated public
7 utility, or nonpublic utilities as the term is used in 66
8 Pa.C.S. § 2913(b) (relating to minimum service requirement).

9 "Vendor." A person other than a local exchange carrier or a
10 wireless provider who supplies 911 or wireless E-911 system
11 services or equipment.

12 "Wireless E-911 service." Service provided by a wireless
13 provider, pursuant to the FCC E-911 Order.

14 "Wireless E-911 State plan." A document to be prepared,
15 maintained and kept current by the Pennsylvania Emergency
16 Management Agency providing for all aspects of the development,
17 implementation, operation and maintenance of a Statewide
18 integrated wireless E-911 system, including the exclusive
19 authority to formulate technical standards and determine
20 permitted uses of and amounts disbursed from the Wireless E-911
21 Emergency Services Fund established by section 11.4(a).

22 "Wireless E-911 surcharge." A monthly fee assessed upon each
23 wireless service customer, other than a prepaid wireless seller,
24 provider or consumer subject to the prepaid wireless E-911
25 surcharge under section 11.4(b.1), for each wireless two-way
26 communication device for which that customer is charged by a
27 wireless provider for wireless service.

28 "Wireless E-911 system." An E-911 system which permits
29 wireless service customers dialing 911 to be connected to a
30 public safety answering point for the reporting of police, fire,

1 medical or other emergency situations.

2 "Wireless provider." A person engaged in the business of
3 providing wireless service to end-use customers in this
4 Commonwealth, including resellers.

5 "Wireless service." Commercial mobile radio service as
6 defined under section 332(d) of the Communications Act of 1934
7 (47 U.S.C. § 332(d)) and which provides real-time, two-way voice
8 service that is interconnected with the public switched
9 telephone network.

10 "Wireless service customer." A person who is billed by a
11 wireless provider or who receives prepaid wireless telephone
12 service from a wireless provider for wireless service within
13 this Commonwealth.

14 Section 2. Section 11.4(a) and (b) of the act, added
15 December 30, 2003 (P.L.384, No.56), are amended and the section
16 is amended by adding a subsection to read:

17 Section 11.4. Wireless E-911 Emergency Services Fund.

18 (a) Establishment of fund.--There is hereby established in
19 the State Treasury a nonlapsing restricted interest-bearing
20 account to be known as the Wireless E-911 Emergency Services
21 Fund. The fund shall consist of the fees collected under
22 [subsection (b)] subsections (b) and (b.1), funds appropriated
23 by the General Assembly and of funds from any other source,
24 private or public. Moneys in the fund and the interest it
25 accrues is hereby appropriated to the Pennsylvania Emergency
26 Management Agency to be disbursed by the agency. The moneys in
27 the fund shall be used only for the following costs:

28 (1) PSAP and wireless provider costs resulting from
29 compliance with the FCC E-911 Order, including development,
30 implementation and testing, operation and maintenance of a

1 Statewide integrated wireless E-911 system. Costs paid from
2 the fund must be eligible recurring or nonrecurring costs as
3 determined by the agency in accordance with sections 11.2(a)
4 and 11.5 for wireless E-911 service provided in accordance
5 with the FCC E-911 Order or a county plan or amended county
6 plan approved by the agency.

7 (2) The agency-approved costs of PSAPs specified in
8 section 8(b) that relate directly or indirectly to the
9 provision of wireless E-911 service, to the extent:

10 (i) the costs are not included in the costs paid
11 under section 11.4(a)(1) and the approved E-911 costs
12 provided in section 11.4(a)(1) have been reimbursed; and

13 (ii) the costs do not exceed the percentage of the
14 actual ratio of demonstrated wireless calls to
15 demonstrated total emergency call volume times the amount
16 of money in the fund, and further:

17 (A) the amount of the costs that may be
18 reimbursed is limited to 25% of the fund if a
19 majority of wireless providers serving the geographic
20 area covered by the PSAP have been tested and
21 accepted by the PSAP for wireless E-911 Phase I
22 service;

23 (B) the amount of the costs that may be
24 reimbursed is limited to 50% of the fund if all of
25 the wireless providers serving the geographic area
26 covered by the PSAP have been tested and accepted by
27 the PSAP for wireless E-911 Phase I service;

28 (C) the amount of the costs that may be
29 reimbursed is limited to 75% of the fund if a
30 majority of wireless providers serving the geographic

1 area covered by the PSAP have been tested and
2 accepted by the PSAP for wireless E-911 Phase II
3 service; and

4 (D) the amount of the costs that may be
5 reimbursed is limited to 100% of the fund if all of
6 the wireless providers serving the geographic area
7 covered by the PSAP have been tested and accepted by
8 the PSAP for wireless E-911 Phase II service.

9 In the event that, pursuant to an FCC E-911 waiver, a wireless
10 provider is temporarily relieved of its obligation to provide
11 wireless E-911 Phase II service in the geographic area covered
12 by a requesting PSAP, such wireless carrier shall be disregarded
13 in the determinations to be made pursuant to subparagraphs (iii)
14 and (iv) until such time as the wireless carrier's obligation to
15 provide wireless E-911 Phase II service again becomes effective.

16 (b) Wireless E-911 surcharge.--Each wireless service
17 customer shall pay a fee, to be known as a wireless E-911
18 surcharge, in an amount of \$1 per month for each device that
19 provides wireless service for which that customer is billed by a
20 wireless provider for wireless service [or receives prepaid
21 wireless telephone service from a wireless provider]. Such fee
22 shall be collected apart from and in addition to any fee levied
23 by the wireless provider in whole or in part for the provision
24 of 911 services.

25 (1) Wireless providers shall collect the fee on behalf
26 of the agency as part of their billing process and shall have
27 no obligation to take any legal action to enforce the
28 collection of the surcharge. Such action may be brought by or
29 on behalf of the agency. Annually, upon written request of
30 the agency, each wireless provider shall provide a list of

1 the names and addresses of those wireless service customers
2 carrying a balance that have failed to pay the wireless E-911
3 surcharge. The wireless provider shall not be liable for such
4 unpaid amounts.

5 (2) If a wireless provider receives a partial payment
6 for a monthly bill from a wireless service customer, the
7 wireless provider shall apply the payment against the amount
8 the wireless service customer owes the wireless provider
9 first and shall remit to the State Treasurer such lesser
10 amount, if any, as shall result therefrom.

11 (3) The fees collected under this subsection shall not
12 be subject to taxes or charges levied by the Commonwealth or
13 any political subdivision of this Commonwealth, nor shall
14 such fees be considered revenue of the wireless provider for
15 any purpose.

16 [(4) In the case of prepaid wireless telephone service,
17 the monthly wireless 911 surcharge imposed by this section
18 shall be remitted based upon each prepaid wireless account in
19 any manner consistent with the provider's existing operating
20 or technological abilities, such as customer address,
21 location associated with the MTN, or reasonable allocation
22 method based upon other comparable relevant data and
23 associated with Pennsylvania, for each wireless customer with
24 an active prepaid wireless account and has a sufficient
25 positive balance as of the last day of each month, if such
26 information is available.]

27 (4) The provisions of this subsection shall not apply to
28 sellers, providers or consumers of prepaid wireless
29 telecommunications service.

30 (b.1) Prepaid wireless E-911 surcharge.--

1 (1) There is hereby imposed a prepaid wireless E-911
2 surcharge of \$1 per retail transaction or the adjusted
3 surcharge, if any, established under paragraph (5). THE \$1 ←
4 SURCHARGE SHALL BE APPLIED TO THE COST OF EACH RETAIL
5 TRANSACTION REGARDLESS OF WHETHER THE SERVICE OR PREPAID
6 WIRELESS DEVICE WAS PURCHASED IN PERSON, BY TELEPHONE,
7 THROUGH THE INTERNET OR BY ANY OTHER METHOD.

8 (2) A prepaid wireless E-911 surcharge shall be
9 collected by the seller from the consumer for each retail
10 transaction occurring in this Commonwealth. The amount of the
11 prepaid wireless E-911 surcharge shall be either separately
12 stated on an invoice, receipt or other similar document that
13 is provided to the consumer by the seller or otherwise
14 disclosed to the consumer. A retail transaction that is
15 effected in person by a consumer at a business location of
16 the seller shall be treated as occurring in this Commonwealth
17 if that business location is in this Commonwealth, and any
18 other retail transaction shall be treated as occurring in
19 this Commonwealth if the retail transaction is treated as
20 occurring in this Commonwealth for the purposes of section
21 202(e.1) of the act of March 4, 1971 (P.L.6, No.2), known as
22 the Tax Reform Code of 1971.

23 (3) A prepaid wireless E-911 surcharge is a liability of
24 the consumer and not of the seller or any provider, except
25 that the seller shall be liable to remit all prepaid wireless
26 E-911 surcharges that the seller collects from consumers as
27 provided under paragraph (6), including all charges that the
28 seller is deemed to collect where the amount of the surcharge
29 has not been separately stated in an invoice, receipt or
30 other similar document provided to the consumer by the

1 seller.

2 (4) The amount of the prepaid wireless E-911 surcharge
3 that is collected by a seller from a consumer, whether or not
4 the amount is separately stated on an invoice, receipt or
5 similar document provided to the consumer by the seller,
6 shall not be included in the base for measuring any tax, fee,
7 surcharge or other charge that is imposed by the
8 Commonwealth, a political subdivision or an intergovernmental
9 agency.

10 (5) The prepaid wireless E-911 surcharge shall be
11 proportionately increased or reduced, as applicable, upon any
12 change to the wireless E-911 surcharge imposed under
13 subsection (b). The increase or reduction shall be effective
14 on the effective date of the change to the surcharge imposed
15 under subsection (b) or, if later, the first day of the first
16 calendar month to occur at least 60 days after the effective
17 date of the change to the surcharge imposed under subsection
18 (b). The Department of Revenue shall provide not less than 30
19 days' notice of an increase or reduction on its public
20 website.

21 (6) Prepaid wireless E-911 surcharges collected by a
22 seller shall be remitted to the Department of Revenue at the
23 times and in the manner provided under Chapter IV of Article ←
24 II of the Tax Reform Code of 1971 with respect to sales and
25 use tax. The Department of Revenue shall establish
26 registration and payment procedures that substantially ←
27 coincide with the registration and payment procedures of ←
28 Chapter IV of Article II of the Tax Reform Code of 1971, ←
29 EXCEPT THE DEPARTMENT MAY REQUIRE THE FILING OF RETURNS AND
30 THE PAYMENT OF THE SURCHARGE BY ELECTRONIC MEANS.

1 ~~(7) A seller may deduct and retain 3% of prepaid~~ ←
2 ~~wireless E-911 surcharges that are collected by the seller~~
3 ~~from consumers~~ DURING THE FIRST 180 DAYS AFTER THE EFFECTIVE ←
4 DATE OF THIS SECTION, A SELLER MAY DEDUCT AND RETAIN 25% OF
5 THE PREPAID WIRELESS SURCHARGES COLLECTED BY THE SELLER FROM
6 CONSUMERS FOR DIRECT START-UP COSTS. AFTER SUCH
7 IMPLEMENTATION PERIOD, A SELLER MAY DEDUCT AND RETAIN UP TO
8 3% OF PREPAID WIRELESS E-911 SURCHARGES THAT ARE COLLECTED BY
9 THE SELLER FROM CONSUMERS FOR ADMINISTRATIVE PURPOSES.

10 ~~(8) The ASSESSMENT, audit and, appeal, COLLECTION AND~~ ←
11 ~~ENFORCEMENT procedures AND ANY OTHER PERTINENT PROVISIONS~~ ←
12 ~~applicable to the sales and use tax imposed under Article II~~
13 ~~of the Tax Reform Code of 1971 shall apply to prepaid~~
14 ~~wireless E-911 surcharges.~~

15 ~~(9) The Department of Revenue shall establish procedures~~
16 ~~by which a seller of prepaid wireless telecommunications~~
17 ~~service may document that a sale is not a retail transaction,~~
18 ~~which procedures shall substantially coincide with the~~
19 ~~procedures for documenting sale for resale transactions for~~
20 ~~sales and use tax purposes under Article II of the Tax Reform~~
21 ~~Code of 1971.~~

22 ~~(10) The Department of Revenue shall pay all remitted~~
23 ~~prepaid wireless E-911 surcharges to the State Treasurer for~~
24 ~~deposit into the fund within 30 days of receipt, for use as~~
25 ~~provided in this act. The Department of Revenue may deduct an~~ ←
26 ~~amount, not to exceed 2% of remitted surcharges, that shall~~
27 ~~be retained by the Department of Revenue to reimburse its~~
28 ~~direct costs of administering the collection and remittance~~
29 ~~of prepaid wireless E-911 surcharges~~ DURING THE FIRST 180 ←
30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT

1 OF REVENUE MAY RETAIN 25% OF THE REMITTED SURCHARGES FOR
2 DIRECT START-UP COSTS. AFTER THE IMPLEMENTATION PERIOD, THE
3 DEPARTMENT MAY RETAIN UP TO 2% OF REMITTED SURCHARGES TO PAY
4 FOR AGENCY EXPENSES DIRECTLY RELATED TO THE COSTS OF
5 ADMINISTERING THE COLLECTION AND REMITTANCE OF PREPAID
6 WIRELESS E-911 SURCHARGES.

7 (11) The provisions of section 11.9 shall apply to
8 providers and sellers of prepaid wireless telecommunications
9 service.

10 (12) The prepaid wireless E-911 surcharge shall be the
11 only E-911 funding obligation imposed with respect to prepaid
12 wireless telecommunications service in this Commonwealth. No
13 tax, fee, surcharge or other charge may be imposed by the
14 Commonwealth, a political subdivision or an intergovernmental
15 agency for E-911 funding purposes, on any provider, seller or
16 consumer with respect to the sale, purchase, use or provision
17 of prepaid wireless telecommunications service.

18 * * *

19 Section 3. This act shall take effect ~~January~~ OCTOBER 1,
20 2010.

