

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1789 Session of 2009

INTRODUCED BY SOLOBAY, EVERETT, MELIO, ADOLPH, BEAR, BELFANTI, BRENNAN, BRIGGS, CARROLL, D. COSTA, DALLY, DePASQUALE, DERMODY, DiGIROLAMO, J. EVANS, FARRY, FRANKEL, GEIST, GIBBONS, GINGRICH, GRUCELA, HALUSKA, HARHAI, HARHART, HARKINS, HENNESSEY, HESS, HORNAMAN, JOSEPHS, W. KELLER, KNOWLES, KORTZ, KOTIK, KULA, LEVDANSKY, MANN, MARKOSEK, MARSHALL, MATZIE, McGEEHAN, McILVAINE SMITH, MENSCH, MILLER, MURT, OBERLANDER, M. O'BRIEN, O'NEILL, OLIVER, PASHINSKI, PAYNE, PETRI, PHILLIPS, PICKETT, QUINN, READSHAW, REICHLEY, SABATINA, SANTONI, SEIP, SIPTROTH, K. SMITH, SONNEY, STERN, STURLA, J. TAYLOR, R. TAYLOR, VEREB, VULAKOVICH, WAGNER, WALKO, WHITE, YOUNGBLOOD AND YUDICHAK, JUNE 29, 2009

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, JUNE 29, 2009

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.

15 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "911 emergency communication system" or "911 system." A
4 system, including enhanced 911 service but excluding a wireless
5 E-911 system, which permits a person dialing 911 by telephone to
6 be connected to a public safety answering point, via normal
7 telephone facilities, for the reporting of police, fire, medical
8 or other emergency situations.

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

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

15 "Agency." The Pennsylvania Emergency Management Agency.

16 "Associated with Pennsylvania."

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

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

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

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

1 "Commission." The Pennsylvania Public Utility Commission.

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

5 "Consumer." A person who purchases prepaid wireless
6 telecommunications service in a retail transaction.

7 "Contribution rate." A fee assessed against a telephone
8 subscriber for the nonrecurring costs, maintenance and operating
9 costs of a 911 system. Counties of the first through second
10 class A may impose a monthly contribution rate in an amount not
11 to exceed \$1 per line on each local exchange access line.

12 Counties of the third through fifth class may impose monthly
13 contribution rates in an amount not to exceed \$1.25 per line on
14 each local exchange access line. Counties of the sixth through
15 eighth class may impose a monthly contribution rate in an amount
16 not to exceed \$1.50 per line on each local exchange access line.

17 The contribution rate may be used by counties for the expenses
18 of implementing, expanding or upgrading a 911 system. Expenses
19 eligible for reimbursement through the contribution rate shall
20 include telephone terminal equipment, trunk line service
21 installation, network changes, building of initial data base and

22 any other nonrecurring costs to establish a 911 system. The
23 contribution rate may also be used to fund recurring costs
24 pursuant to section 8(b). Expenses not eligible for
25 reimbursement through the contribution rate shall include
26 purchase of real estate, cosmetic remodeling, central office

27 upgrades, hiring of dispatchers, ambulances, fire engines or
28 other emergency vehicles, utilities, taxes and other expenses as
29 determined by the Pennsylvania Emergency Management Agency.

30 "Council." The Pennsylvania Emergency Management Council.

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

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

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

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

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

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

29 "Fund." The Wireless E-911 Emergency Services Fund
30 established in section 11.4.

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

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

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

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

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

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

30 "Mobile telephone number" or "MTN." The telephone number

1 assigned to a wireless telephone at the time of initial
2 activation.

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

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

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

13 "Prepaid wireless provider." A person that provides prepaid
14 wireless telecommunications service pursuant to a license issued
15 by the Federal Communications Commission.

16 "Prepaid wireless [telephone] telecommunications service." A
17 wireless [telephone service which is activated in advance by
18 payment of a finite dollar amount or for a finite set of minutes
19 and which, unless an additional finite dollar amount or finite
20 set of minutes is paid in advance, terminates either upon use by
21 a customer and delivery by the wireless carrier of an agreed-
22 upon amount of service corresponding to the total dollar amount
23 paid in advance or within a certain period of time following
24 initial purchase or activation] telecommunications service that
25 allows a caller to dial 911 to access the 911 system, which
26 service must be paid for in advance and is sold in predetermined
27 units or dollars of which the number declines with use in a
28 known amount.

29 "Primary place of use." The street address representative of
30 where the customer's use of the VoIP service primarily occurs.

1 For the purpose of VoIP 911 fees, primary place of use is the
2 customer's registered location on the date the customer is
3 billed.

4 "Public agency." The Commonwealth or a political
5 subdivision, public authority, municipal authority or any
6 organization located in whole or in part within this
7 Commonwealth which provides or has the authority to provide
8 firefighting, law enforcement, ambulance, emergency medical or
9 other emergency services.

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

13 "Retail transaction." The purchase of prepaid wireless
14 telecommunications service from a seller for any purpose other
15 than resale.

16 "Seller." A person who sells prepaid wireless
17 telecommunications service to another person.

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

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

23 "Telephone subscriber." A person who contracts with a local
24 exchange carrier within this Commonwealth for local exchange
25 telephone service, either residential or commercial. When the
26 same person has several telephone dial tone access lines, each
27 dial tone access line shall constitute a separate subscription.
28 For purposes of the contribution rate, the term shall not
29 include pay stations owned or operated by a regulated public
30 utility, or nonpublic utilities as the term is used in 66

1 Pa.C.S. § 2913(b) (relating to minimum service requirement).

2 "Vendor." A person other than a local exchange carrier or a
3 wireless provider who supplies 911 or wireless E-911 system
4 services or equipment.

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

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

15 "Wireless E-911 surcharge." A monthly fee assessed upon each
16 wireless service customer, other than a prepaid wireless seller,
17 provider or consumer subject to the prepaid wireless E-911
18 surcharge under section 11.4(b.1), for each wireless two-way
19 communication device for which that customer is charged by a
20 wireless provider for wireless service.

21 "Wireless E-911 system." An E-911 system which permits
22 wireless service customers dialing 911 to be connected to a
23 public safety answering point for the reporting of police, fire,
24 medical or other emergency situations.

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

28 "Wireless service." Commercial mobile radio service as
29 defined under section 332(d) of the Communications Act of 1934
30 (47 U.S.C. § 332(d)) and which provides real-time, two-way voice

1 service that is interconnected with the public switched
2 telephone network.

3 "Wireless service customer." A person who is billed by a
4 wireless provider or who receives prepaid wireless telephone
5 service from a wireless provider for wireless service within
6 this Commonwealth.

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

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

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

21 (1) PSAP and wireless provider costs resulting from
22 compliance with the FCC E-911 Order, including development,
23 implementation and testing, operation and maintenance of a
24 Statewide integrated wireless E-911 system. Costs paid from
25 the fund must be eligible recurring or nonrecurring costs as
26 determined by the agency in accordance with sections 11.2(a)
27 and 11.5 for wireless E-911 service provided in accordance
28 with the FCC E-911 Order or a county plan or amended county
29 plan approved by the agency.

30 (2) The agency-approved costs of PSAPs specified in

1 section 8(b) that relate directly or indirectly to the
2 provision of wireless E-911 service, to the extent:

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

6 (ii) the costs do not exceed the percentage of the
7 actual ratio of demonstrated wireless calls to
8 demonstrated total emergency call volume times the amount
9 of money in the fund, and further:

10 (A) the amount of the costs that may be
11 reimbursed is limited to 25% of the fund if a
12 majority of wireless providers serving the geographic
13 area covered by the PSAP have been tested and
14 accepted by the PSAP for wireless E-911 Phase I
15 service;

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

21 (C) the amount of the costs that may be
22 reimbursed is limited to 75% of the fund if a
23 majority of wireless providers serving the geographic
24 area covered by the PSAP have been tested and
25 accepted by the PSAP for wireless E-911 Phase II
26 service; and

27 (D) the amount of the costs that may be
28 reimbursed is limited to 100% of the fund if all of
29 the wireless providers serving the geographic area
30 covered by the PSAP have been tested and accepted by

1 the PSAP for wireless E-911 Phase II service.
2 In the event that, pursuant to an FCC E-911 waiver, a wireless
3 provider is temporarily relieved of its obligation to provide
4 wireless E-911 Phase II service in the geographic area covered
5 by a requesting PSAP, such wireless carrier shall be disregarded
6 in the determinations to be made pursuant to subparagraphs (iii)
7 and (iv) until such time as the wireless carrier's obligation to
8 provide wireless E-911 Phase II service again becomes effective.

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

18 (1) Wireless providers shall collect the fee on behalf
19 of the agency as part of their billing process and shall have
20 no obligation to take any legal action to enforce the
21 collection of the surcharge. Such action may be brought by or
22 on behalf of the agency. Annually, upon written request of
23 the agency, each wireless provider shall provide a list of
24 the names and addresses of those wireless service customers
25 carrying a balance that have failed to pay the wireless E-911
26 surcharge. The wireless provider shall not be liable for such
27 unpaid amounts.

28 (2) If a wireless provider receives a partial payment
29 for a monthly bill from a wireless service customer, the
30 wireless provider shall apply the payment against the amount

1 the wireless service customer owes the wireless provider
2 first and shall remit to the State Treasurer such lesser
3 amount, if any, as shall result therefrom.

4 (3) The fees collected under this subsection shall not
5 be subject to taxes or charges levied by the Commonwealth or
6 any political subdivision of this Commonwealth, nor shall
7 such fees be considered revenue of the wireless provider for
8 any purpose.

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

20 (4) The provisions of this subsection shall not apply to
21 sellers, providers or consumers of prepaid wireless
22 telecommunications service.

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

24 (1) There is hereby imposed a prepaid wireless E-911
25 surcharge of \$1 per retail transaction or the adjusted
26 surcharge, if any, established under paragraph (5).

27 (2) A prepaid wireless E-911 surcharge shall be
28 collected by the seller from the consumer for each retail
29 transaction occurring in this Commonwealth. The amount of the
30 prepaid wireless E-911 surcharge shall be either separately

1 stated on an invoice, receipt or other similar document that
2 is provided to the consumer by the seller or otherwise
3 disclosed to the consumer. A retail transaction that is
4 effected in person by a consumer at a business location of
5 the seller shall be treated as occurring in this Commonwealth
6 if that business location is in this Commonwealth, and any
7 other retail transaction shall be treated as occurring in
8 this Commonwealth if the retail transaction is treated as
9 occurring in this Commonwealth for the purposes of section
10 202(e.1) of the act of March 4, 1971 (P.L.6, No.2), known as
11 the Tax Reform Code of 1971.

12 (3) A prepaid wireless E-911 surcharge is a liability of
13 the consumer and not of the seller or any provider, except
14 that the seller shall be liable to remit all prepaid wireless
15 E-911 surcharges that the seller collects from consumers as
16 provided under paragraph (6), including all charges that the
17 seller is deemed to collect where the amount of the surcharge
18 has not been separately stated in an invoice, receipt or
19 other similar document provided to the consumer by the
20 seller.

21 (4) The amount of the prepaid wireless E-911 surcharge
22 that is collected by a seller from a consumer, whether or not
23 the amount is separately stated on an invoice, receipt or
24 similar document provided to the consumer by the seller,
25 shall not be included in the base for measuring any tax, fee,
26 surcharge or other charge that is imposed by the
27 Commonwealth, a political subdivision or an intergovernmental
28 agency.

29 (5) The prepaid wireless E-911 surcharge shall be
30 proportionately increased or reduced, as applicable, upon any

1 change to the wireless E-911 surcharge imposed under
2 subsection (b). The increase or reduction shall be effective
3 on the effective date of the change to the surcharge imposed
4 under subsection (b) or, if later, the first day of the first
5 calendar month to occur at least 60 days after the effective
6 date of the change to the surcharge imposed under subsection
7 (b). The Department of Revenue shall provide not less than 30
8 days' notice of an increase or reduction on its public
9 website.

10 (6) Prepaid wireless E-911 surcharges collected by a
11 seller shall be remitted to the Department of Revenue at the
12 times and in the manner provided under Chapter IV of Article
13 II of the Tax Reform Code of 1971 with respect to sales and
14 use tax. The Department of Revenue shall establish
15 registration and payment procedures that substantially
16 coincide with the registration and payment procedures of
17 Chapter IV of Article II of the Tax Reform Code of 1971.

18 (7) A seller may deduct and retain 3% of prepaid
19 wireless E-911 surcharges that are collected by the seller
20 from consumers.

21 (8) The audit and appeal procedures applicable to the
22 sales and use tax imposed under Article II of the Tax Reform
23 Code of 1971 shall apply to prepaid wireless E-911
24 surcharges.

25 (9) The Department of Revenue shall establish procedures
26 by which a seller of prepaid wireless telecommunications
27 service may document that a sale is not a retail transaction,
28 which procedures shall substantially coincide with the
29 procedures for documenting sale for resale transactions for
30 sales and use tax purposes under Article II of the Tax Reform

1 Code of 1971.

2 (10) The Department of Revenue shall pay all remitted
3 prepaid wireless E-911 surcharges to the State Treasurer for
4 deposit into the fund within 30 days of receipt, for use as
5 provided in this act. The Department of Revenue may deduct an
6 amount, not to exceed 2% of remitted surcharges, that shall
7 be retained by the Department of Revenue to reimburse its
8 direct costs of administering the collection and remittance
9 of prepaid wireless E-911 surcharges.

10 (11) The provisions of section 11.9 shall apply to
11 providers and sellers of prepaid wireless telecommunications
12 service.

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

21 * * *

22 Section 3. This act shall take effect January 1, 2010.