

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS85080-LMf-1 (10/22)

Short Title: Prepaid Wireless/Point of Sale Collection. (Public)

Sponsors: Senators Hartsell and McKissick (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT IMPOSING A SERVICE CHARGE OF ONE AND TWO-TENTHS PERCENT ON THE PURCHASE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS TELECOMMUNICATION SERVICE AND REMITTED TO THE DEPARTMENT OF REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-40(15) is repealed.

SECTION 2. G.S. 62A-43 reads as rewritten:

"§ 62A-43. Service charge for 911 service.

(a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice communications service ~~connection~~–connection, except prepaid wireless telecommunications service as that term is defined in Article 4 of Chapter 62A of the General Statutes, that is capable of accessing the 911 system. The service charge is seventy cents (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service charge is payable by the subscriber to the voice communications service provider. The provider may list the service charge separately from other charges on the bill. Partial payments made by a subscriber are applied first to the amount the subscriber owes the provider for the voice communications service.

(b) ~~Prepaid Wireless. – A voice communications service provider of prepaid wireless telephone service must collect and remit to the 911 Board the monthly service charge imposed upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

(1) ~~Collecting the service charge from each active prepaid wireless telephone service subscriber whose account balance is equal to or greater than the amount of the service charge.~~

(2) ~~Dividing the provider's total earned prepaid wireless telephone service revenue received for the month from each active prepaid wireless telephone service subscriber by fifty dollars (\$50.00) and multiplying the quotient by the amount of the service charge.~~

(c) Remittance to 911 Board. – A voice communications service provider must remit the service charges collected by it under subsection (a) of this section to the 911 Board. The



1 provider must remit the collected service charges by the end of the calendar month following
 2 the month the provider received the charges from its subscribers. A provider may deduct and
 3 retain from the service charges it receives from its subscribers and remits to the 911 Board an
 4 administrative allowance equal to the greater of one percent (1%) of the amount of service
 5 charges remitted or fifty dollars (\$50.00) a month.

6 (d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the
 7 service charge-charges imposed by subsection (a) of this section and G.S. 62A-60(a). If the 911
 8 Board determines that the ~~rate produces~~rates produce revenue that exceeds or is less than the
 9 amount needed, the 911 Board may adjust the ~~rate-rates.~~ The ~~rate-rates~~ must ensure full cost
 10 recovery for voice communications service providers and for primary PSAPs over a reasonable
 11 period of time. A change in the amount of the ~~rate-rates~~ becomes effective only on July 1. The
 12 911 Board must notify providers of a change in the ~~rate-rates~~ at least 90 days before the change
 13 becomes effective.

14"

15 **SECTION 3.** Chapter 62A of the General Statutes is amended by adding a new
 16 Article to read as follows:

17 "Article 4.

18 "Prepaid Wireless E911 Service Charge.

19 "**§ 62A-59. Definitions.**

20 The following definitions apply in this Article:

- 21 (1) Consumer. – A person who purchases prepaid wireless telecommunications
 22 service in a retail sale.
- 23 (2) Prepaid wireless E911 service charge. – The charge that is required to be
 24 collected by a seller from a consumer in the amount established by this
 25 Article.
- 26 (3) Prepaid wireless telecommunications service. – A wireless
 27 telecommunications service that allows a caller to dial 911 to access the 911
 28 system, which service must be paid for in advance and is sold in
 29 predetermined units or dollars of which the number declines with use in a
 30 known amount.
- 31 (4) Provider. – A person that provides prepaid wireless telecommunications
 32 service pursuant to a license issued by the Federal Communications
 33 Commission.
- 34 (5) Retail transaction. – The purchase of prepaid wireless telecommunications
 35 service from a seller for any purpose other than resale.
- 36 (6) Seller. – A person who sells prepaid wireless telecommunications service to
 37 a consumer.
- 38 (7) Wireless telecommunication service. – Commercial mobile radio service as
 39 defined by 47 C.F.R. § 20.3, as amended.

40 "**§ 62A-60. Service charge for prepaid wireless E911 service; seller collects service charge**
 41 **on each retail transaction occurring in this State; remittances to Department of**
 42 **Revenue and transfer to 911 Fund.**

43 (a) A prepaid wireless E911 service charge is imposed on each retail transaction
 44 occurring in this State. The service charge is one and two-tenths percent (1.2%) of the price of
 45 each retail transaction or an adjusted amount set as provided by subsection (e) of this section.

46 (b) A seller of prepaid wireless telecommunications service shall collect the prepaid
 47 wireless E911 service charge from the consumer on each retail transaction occurring in this
 48 State. The amount of the prepaid wireless E911 service charge shall be either disclosed to the
 49 consumer or separately stated on an invoice, receipt, or other similar document provided to the
 50 consumer by the seller. For purposes of this Article, a retail transaction is occurring in this State
 51 if (i) the consumer effects the retail transaction in person at a business location of the seller in

1 this State or (ii) the retail transaction is considered occurring in this State under
2 G.S. 105-164.4B(a).

3 (c) A seller shall remit the prepaid wireless E911 service charges collected by it under
4 subsection (b) of this section to the Department of Revenue at the times and in the manner
5 provided under Article 5 of Chapter 105 of the General Statutes. A seller may deduct and retain
6 from the service charges it collects from consumers and remits to the Department of Revenue
7 an administrative allowance of three percent (3%).

8 (d) For purposes of receiving remittances from sellers under this Article, the
9 Department of Revenue shall establish registration and payment procedures that substantially
10 coincide with the registration and payment procedures that apply to taxes imposed by Article 5
11 of Chapter 105 of the General Statutes. The Department of Revenue shall establish procedures
12 for a seller of prepaid wireless telecommunications service to document that a sale is not a
13 retail transaction, and the procedures established shall substantially coincide with the
14 procedures for documenting a sale for resale transaction under Article 5 of Chapter 105 of the
15 General Statutes. From the remittances received pursuant to subsection (c) of this section, the
16 Secretary of Revenue may retain the costs of collection, not to exceed two hundred twenty-five
17 thousand dollars (\$225,000) a year, as reimbursement to the Department. The Secretary of
18 Revenue shall transfer all remaining remitted prepaid wireless E911 service charges to the 911
19 Fund established under G.S. 62A-44 within 30 days of receipt of the funds. Funds transferred
20 by the Secretary of Revenue to the 911 Fund shall be subject to the provisions of G.S. 62A-44
21 through G.S. 62A-53.

22 (e) The 911 Board shall proportionately increase or reduce the prepaid wireless E911
23 service charge upon any increase or reduction to the monthly 911 service charge by the 911
24 Board under G.S. 62A-43(d). The adjusted prepaid wireless E911 service charge shall be
25 determined by dividing the amount of the adjusted 911 service charge determined by the 911
26 Board under G.S. 62A-43(d) by fifty dollars (\$50.00). A change in the amount of the prepaid
27 wireless E911 service charge becomes effective only on July 1. The 911 Board must notify
28 providers, sellers, and the Department of Revenue of a change in the prepaid wireless E911
29 service charge at least 90 days before the change becomes effective. The Department of
30 Revenue shall provide not less than 30 days' advance notice of an increase or reduction in the
31 prepaid wireless E911 service charge on the Department of Revenue's Web site.

32 (f) When prepaid wireless telecommunications service is sold with one or more other
33 products or services for a single, nonitemized price, the prepaid wireless E911 service charge
34 imposed by subsection (a) of this section shall apply to the entire nonitemized price unless the
35 seller elects to apply the percentage to (i) if the amount of prepaid wireless telecommunications
36 service is disclosed to the consumer as a dollar amount, the dollar amount or (ii) if the retailer
37 can identify the portion of the price that is attributable to the prepaid wireless
38 telecommunications service by reasonable and verifiable standards from its books and records
39 that are kept in the regular course of business for other purposes, including nontax purposes,
40 that portion. However, if 10 minutes or less or five dollars (\$5.00) or less of prepaid wireless
41 telecommunications service is sold with a prepaid wireless device for a single, nonitemized
42 price, the seller may elect not to apply the prepaid wireless E911 service charge provided in
43 subsection (a) of this section to the transaction.

44 (g) The prepaid wireless E911 service charge is the liability of the consumer and not of
45 the seller or of any provider, except that the seller shall be liable for remitting to the
46 Department of Revenue all prepaid wireless E911 service charges that the seller collects from
47 consumers as provided in subsection (b) of this section. The seller shall be deemed to have
48 collected the service charge notwithstanding that the amount of the service charge has neither
49 been separately disclosed nor stated on an invoice, receipt, or other similar document the seller
50 provided to the consumer.

1 (h) The amount of the prepaid wireless E911 service charge that is collected by a seller
2 from a consumer, if the amount is separately stated on an invoice, receipt, or similar document
3 provided to the consumer by the seller, shall not be included in the base for measuring any tax,
4 charge, surcharge, or other charge that is imposed by this State, any political subdivision of this
5 State, or any intergovernmental agency.

6 **"§ 62A-61. Limitation of liability.**

7 (a) Each provider and seller of prepaid wireless telecommunications service is entitled
8 to the limitation of liability provided in G.S. 62A-53.

9 (b) In addition to the limitation of liability provided in subsection (a) of this section,
10 each provider and seller of prepaid wireless telecommunications service is entitled to the
11 following limitations of liability:

12 (1) No provider or seller of prepaid wireless telecommunications service shall
13 be liable for damages to any person resulting from or incurred in connection
14 with the provision of or the failure to provide 911 or E911 service, or for
15 identifying or failing to identify the telephone number, address, location, or
16 name associated with any person or device that is accessing or attempting to
17 access 911 or E911 service.

18 (2) No provider or seller of prepaid wireless telecommunications service shall
19 be liable for damages to any person resulting from or incurred in connection
20 with the provision of any lawful assistance to any investigative or law
21 enforcement officer of the United States, this State or any other state, or any
22 political subdivision of this State or any other state, in connection with any
23 lawful investigation or other law enforcement activity by the law
24 enforcement officer.

25 **"§ 62A-62. Exclusivity of prepaid wireless E911 service charge.**

26 The prepaid wireless E911 service charge imposed by this Article shall be the only E911
27 funding obligation imposed with respect to prepaid wireless telecommunication service in this
28 State, and no tax, fee, surcharge, or other charge shall be imposed in this State, any subdivision
29 of this State, or any intergovernmental agency, for E911 funding purposes, upon any provider,
30 seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless
31 telecommunications service."

32 **SECTION 4.** Chapter 105 of the General Statutes is amended by adding a new
33 Article to read as follows:

34 "Article 5H.

35 "Prepaid Wireless E911 Service Charge.

36 **"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

37 The Department of Revenue shall comply with the provisions of Article 4 of Chapter 62A
38 of the General Statutes to receive and transfer to the 911 Fund prepaid wireless E911 service
39 charges collected as a result of retail transactions occurring in this State."

40 **SECTION 5.** This act becomes effective January 1, 2012, and applies to all retail
41 transactions occurring in this State, as those terms are defined in Section 3 of this act, on or
42 after that date.