

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 571*
Committee Substitute Favorable 5/18/11

Short Title: Prepaid Wireless/Point of Sale Collection.

(Public)

Sponsors:

Referred to:

March 31, 2011

A BILL TO BE ENTITLED

AN ACT IMPOSING A SERVICE CHARGE ON EACH 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 TELECOMMUNICATIONS 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.(a) G.S. 62A-43(b) reads as rewritten:

"(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. The monthly service charge for 911 service is not imposed on prepaid wireless service."~~

SECTION 1.(b) This section is effective when it becomes law.

SECTION 2. G.S. 62A-40(15) is repealed.

SECTION 3. G.S. 62A-43, as amended by Section 1 of this act, 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.



1 (b) Prepaid Wireless. – The monthly service charge for 911 service is ~~not imposed~~
 2 ~~on~~for prepaid wireless service. Service is collected as provided in Article 4 of Chapter 62A of
 3 the General Statutes.

4 (c) Remittance to 911 Board. – A voice communications service provider must remit
 5 the service charges collected by it under subsection (a) of this section to the 911 Board. The
 6 provider must remit the collected service charges by the end of the calendar month following
 7 the month the provider received the charges from its subscribers. A provider may deduct and
 8 retain from the service charges it receives from its subscribers and remits to the 911 Board an
 9 administrative allowance equal to the greater of one percent (1%) of the amount of service
 10 charges remitted or fifty dollars (\$50.00) a month.

11 (d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the
 12 ~~service charge.~~ charges imposed by subsection (a) of this section and G.S. 62A-60(a). If the 911
 13 Board determines that the ~~rate produces~~ rates produce revenue that exceeds or is less than the
 14 amount needed, the 911 Board may adjust the ~~rate.~~ rates. The ~~rate.~~ rates must ensure full cost
 15 recovery for voice communications service providers and for primary PSAPs over a reasonable
 16 period of time. A change in the amount of the ~~rate.~~ rates becomes effective only on July 1. The
 17 911 Board must notify providers of a change in the ~~rate.~~ rates at least 90 days before the change
 18 becomes effective.

19"

20 **SECTION 4.** Chapter 62A of the General Statutes is amended by adding a new
 21 Article to read as follows:

22 "Article 4.

23 "Prepaid Wireless E911 Service Charge.

24 "**§ 62A-59. Definitions.**

25 The following definitions apply in this Article:

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

45 "**§ 62A-60. Service charge for prepaid wireless E911 service; seller collects service charge**
 46 **on each retail transaction occurring in this State; remittances to Department of**
 47 **Revenue and transfer to 911 Fund.**

48 (a) A prepaid wireless E911 service charge is imposed on each retail transaction
 49 occurring in this State. The service charge is seventy cents (70¢) on each retail transaction or a
 50 lower amount set by the Board as provided by subsection (e) of this section.

1 **(b)** A seller of prepaid wireless telecommunications service shall collect the prepaid
2 wireless E911 service charge from the consumer on each retail transaction occurring in this
3 State. The amount of the prepaid wireless E911 service charge shall be either disclosed to the
4 consumer or separately stated on an invoice, receipt, or other reasonable notification provided
5 to the consumer by the seller. For purposes of this Article, a retail transaction is occurring in
6 this State if (i) the consumer effects the retail transaction in person at a business location of the
7 seller in this State or (ii) the retail transaction is considered occurring in this State under
8 G.S. 105-164.4B(a).

9 **(c)** A seller shall remit the prepaid wireless E911 service charges collected by it under
10 subsection (b) of this section semiannually to the Department of Revenue in the manner
11 provided under Article 5 of Chapter 105 of the General Statutes. A seller may deduct and retain
12 from the service charges it collects from consumers and remits to the Department of Revenue
13 an administrative allowance of five percent (5%).

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

28 **(e)** The 911 Board must set the prepaid wireless E911 service charge at the same rate as
29 established under G.S. 62A-43(d). A change in the amount of the prepaid wireless E911 service
30 charge becomes effective only on July 1. The 911 Board must notify providers, sellers, and the
31 Department of Revenue of a change in the prepaid wireless E911 service charge at least 90
32 days before the change becomes effective. The Department of Revenue shall provide not less
33 than 30 days' advance notice of an increase or reduction in the prepaid wireless E911 service
34 charge on the Department of Revenue's Web site.

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

47 **(g)** The prepaid wireless E911 service charge is the liability of the consumer and not of
48 the seller or of any provider, except that the seller shall be liable for remitting to the
49 Department of Revenue all prepaid wireless E911 service charges that the seller collects from
50 consumers as provided in subsection (b) of this section. The seller shall be deemed to have
51 collected the service charge notwithstanding that the amount of the service charge has neither

1 been separately disclosed nor stated on an invoice, receipt, or other reasonable notification the
2 seller provided to the consumer.

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

8 **"§ 62A-61. Limitation of liability.**

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

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

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

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

27 **"§ 62A-62. Exclusivity of prepaid wireless E911 service charge.**

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

34 **SECTION 5.** Chapter 105 of the General Statutes is amended by adding a new
35 Article to read as follows:

36 "Article 5H.

37 "Prepaid Wireless E911 Service Charge.

38 **"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

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

42 **SECTION 6.** Notwithstanding G.S. 62A-60(c) as enacted by Section 4 of this act,
43 sellers that collect the prepaid wireless E911 service charge may retain all of the service
44 charges collected in the first three calendar months after the effective date of this act.

45 **SECTION 7.** Unless otherwise provided, this act becomes effective July 1, 2013,
46 and applies to all retail transactions occurring in this State, as that term is defined in Section 3
47 of this act, on or after that date.