

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2261
(Senators Cook, Dotzenrod, Hogue)
(Representatives Headland, Kasper, Thoreson)

AN ACT to create and enact two new sections to chapter 57-40.6 of the North Dakota Century Code, relating to the creation of a prepaid wireless emergency 911 fee; to amend and reenact section 57-40.6-01, subsection 1 of section 57-40.6-02, and sections 57-40.6-03, 57-40.6-08, and 57-40.6-13 of the North Dakota Century Code, relating to prepaid wireless services and limitation of liability for prepaid wireless service providers or sellers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions.

In this chapter, unless the context otherwise requires:

1. ~~"Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.~~
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, ~~active prepaid wireless service~~, and voice over internet protocol service.
- ~~3.~~2. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
3. "Commissioner" means the state tax commissioner.
4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Consumer" means a person who purchases prepaid wireless service in a retail transaction.
- ~~5.~~6. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
- ~~6.~~7. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
8. "Prepaid wireless emergency 911 fee" means the fee that is required to be collected by a seller from a consumer in the amount established under section 4 of this Act.

- ~~7-9.~~ "Prepaid wireless service" means ~~wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments~~any telecommunications service that provides the right to use a mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which are paid for in advance and sold in predetermined units or dollars which decline with use in a known amount.
- ~~10.~~ "Prepaid wireless service provider" means any person that provides prepaid wireless telecommunications service pursuant to a license issued by the federal communications commission.
- ~~8-11.~~ "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
- ~~9-12.~~ "Public safety answering point service area" means the geographic area for which a public safety answering point has dispatch and emergency communications responsibility.
- ~~10-13.~~ "Public safety telecommunicator" means an individual whose primary full-time or part-time duties are receiving, processing, and transmitting public safety information received through an emergency services communication system.
- ~~14.~~ "Retail transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale.
- ~~15.~~ "Seller" means a person who sells prepaid wireless services to a consumer.
- ~~11-16.~~ "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in section 57-34.1-02.
- ~~12-17.~~ "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- ~~13-18.~~ "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~14-19.~~ "Unpublished" means information that is not published or available from directory assistance.
- ~~15-20.~~ "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~16-21.~~ "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~17-22.~~ "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.

~~18-23.~~ "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

- a. Services commonly referred to as wireless; and
- b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

~~19-24.~~ "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within this state.

SECTION 2. AMENDMENT. Subsection 1 of section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar and fifty cents per month per communication connection and must be applied equally upon all assessed communications services. Prepaid wireless service is not subject to the fee imposed under this section.

SECTION 3. AMENDMENT. Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03. Payment of fee by assessed communications service subscriber or customer.

~~The assessed communications service provider shall collect the fee from the subscriber or customer of the service.~~

1. ~~For prepaid wireless service, the provider shall remit the monthly fee authorized by section 57-40.6-02 based either upon each active prepaid wireless telephone associated with this state for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month. The provider shall remit the fee in a manner consistent with the provider's existing operating or technological abilities, including by customer address, location associated with the wireless telephone number, or reasonable allocation method based upon other relevant data. The fee amount or an equivalent number of minutes may be reduced from the prepaid customer's account. However, collection of the fee in the manner of a reduction of value or minutes from the prepaid customer's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale. The assessed communications service provider shall collect the fee authorized under section 57-40.6-02 from the subscriber or customer of the service.~~
2. For assessed communications service that involves a monthly billing, in the billing statement or invoice to the subscriber, the provider shall state the amount of the fee separately.

3. For prepaid wireless service, the fee shall be imposed, collected, and administered according to the provisions of section 4 of this Act. The fee imposed under section 4 of this Act shall be in lieu of any fees imposed on assessed communication services under section 57-40.6-02.

SECTION 4. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Prepaid wireless emergency 911 fee.

1. There is imposed a prepaid wireless emergency 911 fee of two percent on the gross receipts of sellers from all sales at retail of prepaid wireless services in this state.
 - a. A retail transaction that is made, in person, by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under the provisions of chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.
 - b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the commissioner.
 - c. An entity required to collect and remit the prepaid wireless emergency 911 fee shall register with the commissioner. The registration shall be made in the form prescribed by the commissioner, in which the registrant shall identify the name under which the registrant transacts or intends to transact business, the location of the business, the federal identification number, and other information as the commissioner may require.
 - d. Gross receipts from sales at retail of prepaid wireless services are exempt from the prepaid wireless emergency 911 fee imposed by this section when the sale is made to a person entitled to a sales and use tax exemption under subsections 6 or 12 of section 57-39.2-04.
2. The prepaid wireless emergency 911 fee shall be collected by the seller from the consumer. The amount of the prepaid wireless emergency 911 fee shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.
3. The prepaid wireless emergency 911 fee is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless emergency 911 fees the seller collects from the consumer, including all fees the seller is deemed to collect when the amount of the fee has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.
4. If the amount of the prepaid wireless emergency 911 fee imposed by this section is separately stated on an invoice, receipt, or other similar document provided to the consumer, the prepaid wireless emergency 911 fee may not be included in the base for measuring any other tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.
5. When prepaid wireless service is sold with one or more other products or services for a single, nonitemized price, then the percentage specified in subsection 1 shall apply to the entire nonitemized price unless the seller elects to apply the percentage to:
 - a. The amount of the prepaid wireless service that is disclosed to the consumer as a dollar amount, including the fee imposed by this section; or

- b. The seller identifies the portion of the price that is attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records that are kept in the regular course of business.
6. If a minimal amount of prepaid wireless service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the percentage specified in subsection 1. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars or less, is minimal.
7. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for audit, refunds, credits, or rules, not inconsistent with the provisions of this chapter, govern the administration of the prepaid wireless emergency 911 fee imposed in this chapter.
8. a. A seller must complete a prepaid emergency 911 fee return reporting the gross receipts of the seller for prepaid wireless services sold, the amount of the prepaid wireless emergency 911 fee for the period covered by the return, and any other information the commissioner may require to enable the seller to correctly compute and collect the prepaid wireless emergency 911 fee.
 - b. If the seller is a retailer under chapter 57-39.2, the seller may file the prepaid emergency 911 fee return and pay the fees due at the same time the sales and use tax is due under section 57-39.2-11 or 57-39.2-12.
 - c. The seller required to collect, report, and remit the prepaid wireless emergency 911 fee imposed under this section shall retain one hundred percent of the amount of fee due to cover the cost of collecting and transmitting the fee to the commissioner beginning with the first three months the seller begins selling prepaid wireless service, or for the first three months after the effective date of this Act if the seller is making retail sales of prepaid wireless services prior to January 1, 2014, and shall thereafter retain three percent of the fee.

SECTION 5. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Prepaid wireless emergency 911 fee fund.

All fees, penalties, and other charges collected under section 4 of this Act must be paid to the commissioner in the form of a remittance payable to the commissioner. The commissioner shall transmit the fees collected monthly to the state treasurer to be credited to a special fund in the state treasury, to be known as the prepaid wireless emergency 911 fee fund. The state treasurer, no less than quarterly, shall pay over the moneys accumulated in the fund to the governing joint powers entity established pursuant to chapter 54-40.3 for the specific purpose of implementing emergency communications systems for the state's political subdivisions. The proceeds from the prepaid wireless emergency 911 fee shall be used specifically for the implementation, maintenance, or operation of the emergency services communication system.

SECTION 6. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system, automated notification system, or emergency instructions - Liability.

1. A public agency, public safety agency, assessed communications service provider, prepaid wireless service provider or seller, or person that provides access to an emergency services communication system or an automated notification system, or any officer, agent, or employee of any public agency, public safety agency, assessed communications service provider, prepaid wireless service provider or seller, or person is not liable for any civil damages as a

result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.

2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.
3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

SECTION 7. AMENDMENT. Section 57-40.6-13 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-13. Provision of call location information by wireless service provider or prepaid wireless service provider or seller to law enforcement.

1. Upon request of a law enforcement agency or a public safety answering point on behalf of a law enforcement agency, a wireless service provider shall provide call location information concerning the telecommunications device of a user to the requesting law enforcement agency or public safety answering point. A prepaid wireless service provider or seller shall provide such call location information if available. A law enforcement agency or public safety answering point may not request information under this section unless for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.
2. A wireless service provider or prepaid wireless service provider or seller may establish protocols by which the carrier voluntarily discloses call location information.
3. A claim for relief may not be brought in any court against any wireless service provider, prepaid wireless service provider or seller, or any other person for providing call location information if acting in good faith and under this section.
4. The bureau of criminal investigation shall obtain contact information from all wireless service providers authorized to do business in this state to facilitate a request from a law enforcement agency or a public safety answering point on behalf of a law enforcement agency for call location information under this section. The bureau shall disseminate the contact information to each public safety answering point in this state.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 2013.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2261.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 78 Nays 15 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State