

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 302

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

Sponsors: Senators Hartsell and McKissick.

Referred to: Finance.

March 10, 2011

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**SECTION 1.** G.S. 62A-40(15) is repealed.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 provider must remit the collected service charges by the end of the calendar month following the month the provider received the charges from its subscribers. A provider may deduct and



1 retain from the service charges it receives from its subscribers and remits to the 911 Board an  
2 administrative allowance equal to the greater of one percent (1%) of the amount of service  
3 charges remitted or fifty dollars (\$50.00) a month.

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

12 ...."

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

15 "Article 4.

16 "Prepaid Wireless E911 Service Charge.

17 "**§ 62A-59. Definitions.**

18 The following definitions apply in this Article:

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

38 "**§ 62A-60. Service charge for prepaid wireless E911 service; seller collects service charge**  
39 **on each retail transaction occurring in this State; remittances to Department of**  
40 **Revenue and transfer to 911 Fund.**

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

44 (b) A seller of prepaid wireless telecommunications service shall collect the prepaid  
45 wireless E911 service charge from the consumer on each retail transaction occurring in this  
46 State. The amount of the prepaid wireless E911 service charge shall be either disclosed to the  
47 consumer or separately stated on an invoice, receipt, or other similar document provided to the  
48 consumer by the seller. For purposes of this Article, a retail transaction is occurring in this State  
49 if (i) the consumer effects the retail transaction in person at a business location of the seller in  
50 this State or (ii) the retail transaction is considered occurring in this State under  
51 G.S. 105-164.4B(a).

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

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

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

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

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

49       (h) The amount of the prepaid wireless E911 service charge that is collected by a seller  
50 from a consumer, if the amount is separately stated on an invoice, receipt, or similar document  
51 provided to the consumer by the seller, shall not be included in the base for measuring any tax,

1 charge, surcharge, or other charge that is imposed by this State, any political subdivision of this  
2 State, or any intergovernmental agency.

3 **"§ 62A-61. Limitation of liability.**

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

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

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

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

22 **"§ 62A-62. Exclusivity of prepaid wireless E911 service charge.**

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

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

31 "Article 5H.

32 "Prepaid Wireless E911 Service Charge.

33 **"§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

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

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