

VIRGINIA ACTS OF ASSEMBLY -- 2005 RECONVENED SESSION

CHAPTER 942

An Act to amend and reenact §§ 56-484.12, 56-484.14, 56-484.16, and 56-484.17 of the Code of Virginia, relating to the Wireless E-911 Services Board.

[S 1159]

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-484.12, 56-484.14, 56-484.16, and 56-484.17 of the Code of Virginia are amended and reenacted as follows:

§ 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning attributed in subsection M of § 58.1-3812.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of ~~\$.75~~ \$0.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia; *provided, however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17*

is not required to be billed.

§ 56-484.14. Powers and duties of Wireless E-911 Services Board.

The Board shall have the power and duty to:

1. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, including purchase agreements payable from (i) the Wireless E-911 Fund and (ii) other moneys appropriated for the provision of enhanced wireline emergency telecommunications services only in specific local jurisdictions that are not wireline E-911 capable as of July 1, 2000.

2. Pursue all legal remedies to enforce any provision of this article, or any contract entered into pursuant to this article.

3. Develop a comprehensive, enhanced wireless emergency telecommunications plan for implementing statewide enhanced wireless emergency telecommunications services. In constructing and periodically updating this plan as appropriate, the Board shall monitor trends and advances in enhanced wireless emergency telecommunications technology, plan and forecast future needs for enhanced wireless emergency telecommunications technology, and formulate strategies for the efficient and effective delivery of enhanced wireless emergency telecommunications services.

4. Develop and adopt regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for funding enhanced wireless emergency telecommunication services in the Commonwealth.

5. Grant such extensions of time for compliance with the provisions of § 56-484.16 as the Board deems appropriate.

6. Take all steps necessary to inform the public of the use of the digits "9-1-1" as the designated emergency telephone number and the use of the digits "#-7-7" as a designated non-emergency telephone number.

7. Report annually to the Governor, the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission on (i) the state of enhanced wireless emergency telecommunications services in the Commonwealth, (ii) the impact of, or need for, legislation affecting enhanced wireless emergency telecommunications services in the Commonwealth, (iii) the need for changes in the Wireless E-911 funding mechanism as appropriate, and (iv) the sufficiency of other moneys appropriated for the provision of enhanced wireline emergency telecommunications services only in those local jurisdictions not wireline capable as of July 1, 2000.

8. Provide advisory technical assistance to PSAPs and state and local law enforcement, and fire and emergency medical service agencies, upon request.

9. Collect, distribute, and withhold moneys from the Wireless E-911 Fund as provided in this article.

10. *Develop a comprehensive single, statewide electronic addressing database to support geographic data and statewide base map data programs pursuant to § 2.2-2027.*

11. *Receive such funds as may be appropriated for purposes consistent with this article and such gifts, donations, grants, bequests, or other funds as may be received from, applied for or offered by either public or private sources.*

~~10~~ 12. Manage other moneys appropriated for the provision of enhanced wireline emergency telecommunications services only in specific local jurisdictions that are not wireline E-911 capable as of July 1, 2000.

~~11~~ 13. Perform all acts necessary, convenient or desirable to carrying out the purposes of this article.

§ 56-484.16. Local emergency telecommunications requirements; use of digits "9-1-1".

A. ~~Except as provided in subsection D, all county, city or town PSAPs that as of July 1, 2000, are operating a wireline E-911 system and capable of receiving wireless 911 calls directly shall begin answering wireless 911 and E-911 calls no later than July 1, 2002, unless an extension of time has been granted by the Board. Except as provided in subsection D, all other county, city or town PSAPs shall begin answering and responding to wireless 911 and E-911 calls no later than July 1, 2003, unless an extension of time has been granted by the Board. The digits "9-1-1" shall be the designated wireless emergency telephone number in Virginia. No public safety agency shall advertise or otherwise promote the use of any telephone number for emergency response services other than "9-1-1."~~

B. ~~Except as provided in subsection D, on or before July 1, 2003, every county, city or town in the Commonwealth shall be operating a wireline served by an E-911 system, unless an extension of time has been granted by the Board.~~

C. B. The digits "9-1-1" shall be the designated emergency telephone number in Virginia. No public safety agency shall advertise or otherwise promote the use of any number for emergency response service other than "9-1-1".

D. The provisions of this section shall not apply to any county, city, or town in which (i) fifty percent or more of the locality's geographic area is unable to receive wireless telephone service; (ii) no taxes are imposed for E-911 services pursuant to § 58.1-3813.1; and (iii) the Board has designated a specific PSAP or the Virginia State Police to answer wireless 911 and wireless E-911 calls originating in the particular locality, and the designated entity agrees to answer wireless 911 and wireless E-911 calls.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Except as provided in § 2.2-2031, moneys in the Fund shall be used solely for the purposes stated in subsections C through F. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the ~~Director~~ *Chief Information Officer of the Commonwealth*.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. ~~All~~ *In addition, the wireless E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to the provisions in this subsection. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Board for deposit in the Fund. Each CMRS provider shall reduce collected surcharge amounts to the minimum amount necessary to defray costs of collecting the surcharges, and CMRS reseller may retain an amount equal to three percent of the amount collected to defray the costs of collecting the surcharges.* State and local taxes shall not apply to ~~the any~~ wireless E-911 surcharge. ~~Fees levied under this subsection collected from customers. Surcharges collected from customers who do not purchase CMRS service on a prepaid basis shall be subject to the provisions of subsection K of § 58.1-3812.~~

~~The surcharge shall be collected from wireless service subscribers through monthly billing. For any subscriber not billed on a monthly basis, the surcharge shall be collected either at the point of sale or calculated monthly based on the number of wireless subscribers on the last day of the month. The surcharge amount or an equivalent number of air-time minutes may be reduced from a prepaid subscriber's account when direct billing is not possible.~~

For CMRS customers who do not purchase CMRS service on a prepaid basis, the CMRS provider and CMRS reseller shall collect the surcharge through regular periodic billing.

For CMRS customers who purchase CMRS service on a prepaid basis, the wireless E-911 surcharge shall be determined according to one of the following methodologies:

a. The CMRS provider and CMRS reseller shall collect, on a monthly basis, the wireless E-911 surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge; or

b. The CMRS provider and CMRS reseller shall divide its total earned prepaid wireless telephone revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting period by \$50, multiply the quotient by the surcharge amount, and pay the resulting amount to the Board without collecting a separate charge from its prepaid customers for such amount; or

c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale.

Collection of the wireless E-911 surcharge from or with respect to prepaid customers shall not reduce the sales price for purposes of taxes which are collected at point of sale.

C. *To the extent of appropriated funds,* the Board shall provide full payment to PSAP operators for all wireless E-911 PSAP costs and to CMRS providers of all wireless E-911 CMRS costs. For these purposes (i) each PSAP operator shall submit to the Board on or before October 1 of each year, an estimate of wireless E-911 PSAP costs it expects to incur during its next fiscal year and (ii) each CMRS provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it operates. The Board shall review such estimates and advise each PSAP operator and CMRS provider on or before the following March 1 whether its estimate qualifies for payment hereunder and whether the Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. Each PSAP operator and CMRS provider shall notify the Board promptly of any material change in its plans to provide wireless E-911 service.

D. The Board shall make such qualifying payments to each PSAP operator and CMRS provider at the beginning of each calendar quarter of such fiscal year or on an alternate schedule approved by the Board. If the Wireless E-911 Fund is insufficient during any calendar quarter to make all such qualifying payments, the Board shall prorate payments equally among all PSAP operators and CMRS providers during such calendar quarter. ~~Unpaid amounts shall be carried forward for payment during the next calendar quarter. Such carry-forward process shall continue until all actually incurred costs have been paid may be included in future funding requests to the Board.~~

E. ~~During the period July 1 through September 30 of each year~~ *After the end of each fiscal year, on a schedule adopted by the Board,* the Board shall determine whether qualifying payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or CMRS provider. Each PSAP operator or CMRS provider shall provide such verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the Board or credited to qualifying payments during the then current fiscal year, on such schedule as the Board shall determine. *If payments are less than the actual costs reported, the Board may include the additional funding with the next*

quarterly payment for the then current fiscal year.

F. Any estimate of wireless E-911 PSAP costs submitted to the Board after October 1 and any estimate of wireless E-911 CMRS costs submitted to the Board after December 31 of any year shall be reviewed by the Board as described in subsection A C to the extent practicable as determined by the Board; however, ~~qualifying any PSAP or CMRS costs submitted after the start of the fiscal year shall not be considered by the Board.~~ *Qualifying* payments based on estimates submitted in accordance with the schedule set forth in subsection A C shall have priority for payment.

G. CMRS providers and PSAPs found by the Board to be using the Wireless E-911 Fund moneys for purposes other than those authorized by the Board shall be provided with written notice by the Board of such unauthorized expenditures. Upon receipt of the notice, the named CMRS provider or PSAP shall cease making any expenditure involving Wireless E-911 Fund moneys identified by the Board as unauthorized. The CMRS provider or PSAP may petition and shall receive a hearing before the Board within a reasonable time. At the Board's discretion, the CMRS provider or PSAP shall be required to refund within 90 days any Wireless E-911 Fund moneys spent on unauthorized expenditures to the Board for deposit into the Wireless E-911 Fund. CMRS providers or PSAPs who fail to cease making unauthorized expenditures or fail to comply with a request to refund Wireless E-911 Fund moneys shall be subject to a suspension of future Wireless E-911 funding by the Board until such time as they comply with all provisions of this article. Any action of the Board made pursuant to this ~~section~~ *subsection* shall be subject to appeal to the circuit court in which the CMRS provider or PSAP is located, or to the Circuit Court for the City of Richmond.

H. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission.

I. The special tax authorized by § 58.1-3813.1 shall not be imposed on consumers of CMRS.