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**SENATE BILL NO. 441**

Offered January 13, 2010

Prefiled January 13, 2010

*A BILL to amend and reenact §§ 56-484.12 and 56-484.17 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-484.17:1, relating to establishing the rate and collection procedures for E-911 charges on prepaid wireless mobile telecommunications service.*

Patron—Saslaw

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-484.12 and 56-484.17 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-484.17:1 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 as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

*"Postpaid CMRS" means CMRS that is not prepaid CMRS, as defined in § 56-484.17:1.*

"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.

"VoIP service" means interconnected voice over Internet protocol service as defined in the Code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

"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 all prepaid wireless E-911 charges collected pursuant to § 56-484.17:1, and any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers

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59 pursuant to the FCC order.

60 "Wireless E-911 surcharge" means a monthly fee of \$0.75 billed *with respect to postpaid CMRS* by  
61 each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary  
62 use in Virginia; ~~provided, however, that any fee collected or paid pursuant to the third paragraph of~~  
63 ~~subsection B of § 56-484.17 is not required to be billed.~~

64 § 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

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

73 B. Each CMRS provider *and each CMRS reseller* shall collect a wireless E-911 surcharge from each  
74 of its customers whose place of primary use is within the Commonwealth. ~~In addition, the wireless~~  
75 ~~E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to~~  
76 ~~the provisions in this subsection.~~ However, no surcharge shall be imposed on federal, state and local  
77 government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days  
78 to the Board for deposit in the Fund. Each CMRS provider and CMRS reseller may retain an amount  
79 equal to three percent of the ~~amount~~ *wireless E-911 surcharges* collected to defray the costs of  
80 collecting the surcharges. State and local taxes shall not apply to any wireless E-911 surcharge collected  
81 from customers. Surcharges collected from customers ~~who do not purchase CMRS service on a prepaid~~  
82 ~~basis shall be subject to the provisions of the federal Mobile Telecommunications Sourcing Act (4~~  
83 ~~U.S.C. § 116 et seq., as amended).~~

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

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

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

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

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

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

98 C. Sixty percent of the Wireless E-911 Fund shall be distributed on a monthly basis to the PSAPs  
99 according to the percentage of recurring wireless E-911 funding received by the PSAP as determined by  
100 the Board. The Board shall calculate the distribution percentage for each PSAP at the start of each fiscal  
101 year based on the cost and call load data from the previous fiscal year and implement this percentage by  
102 October 1 of the current year. Using 30% of the Wireless E-911 Fund, the Board shall provide full  
103 payment to CMRS providers of all wireless E-911 CMRS costs. For these purposes each CMRS  
104 provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911  
105 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose  
106 jurisdiction it operates. The Board shall review such estimates and advise each CMRS provider on or  
107 before the following March 1 whether its estimate qualifies for payment hereunder and whether the  
108 Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. The  
109 remaining 10% of the Fund and any remaining funds for the previous fiscal year from the 30% for  
110 CMRS providers shall be distributed to PSAPs or on behalf of PSAPs based on grant requests received  
111 by the Board each fiscal year. The Board shall establish criteria for receiving and making grants from  
112 the Fund, including procedures for determining the amount of a grant and payment schedule; however,  
113 the grants must be to the benefit of wireless E-911. Any grant funding that has not been committed by  
114 the Board by the end of the fiscal year shall be distributed to the PSAPs based on the same distribution  
115 percentage used during the fiscal year in which the funding was collected; however, the Board may  
116 retain some or all of this uncommitted funding for an identified funding need in the next fiscal year.

117 D. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall audit the  
118 grant funding received by all recipients to ensure it was utilized in accordance with the grant  
119 requirements. For the fiscal year ending June 30, 2005, the Board shall determine whether qualifying  
120 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 funding recipient 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 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 in the then current fiscal year.

E. 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.

F. The special tax authorized by § 58.1-1730 shall not be imposed on consumers of CMRS.

*§ 56-484.17:1. Collection of prepaid wireless E-911 charge at point of sale; rate established.*

A. As used in this section, unless the context requires a different meaning:

"Department" means the Department of Taxation.

"End user" means a person who purchases prepaid CMRS in a retail transaction.

"Prepaid CMRS" means CMRS that allows a caller to dial 911 to access the 911 system, which CMRS service is required to be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Prepaid wireless E-911 charge" means the charge that is required to be collected by a seller from an end user in the amount established under subsection B.

"Retail transaction" means the purchase of prepaid CMRS from a seller for any purpose other than resale. If more than one item or article of prepaid CMRS is purchased by an end user, then each item or article purchased shall be deemed to be a separate retail transaction.

"Seller" means a person who sells prepaid CMRS to an end user.

B. The prepaid wireless E-911 charge:

1. Shall be \$0.50 per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection D, such adjusted amount.

2. Shall be collected by the seller from the end user with respect to each retail transaction occurring in the Commonwealth. The amount of the prepaid wireless E-911 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the end user by the seller or otherwise disclosed to the end user. For purposes of this subdivision, a retail transaction that is effected in person by an end user at a business location of the seller shall be treated as occurring in the Commonwealth if that business location is in the Commonwealth, and any other retail transaction shall be treated as occurring in the Commonwealth if treated as occurring in the Commonwealth for purposes of the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

3. Is the liability of the end user and not of the seller or of any CMRS provider, except that the seller shall be liable to remit all prepaid wireless E-911 charges that the seller collects from end users as provided in subsection E, including all charges that the seller is deemed to have collected in cases in which the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the end user by the seller.

C. The amount of the prepaid wireless E-911 charge that is collected by a seller from an end user, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the end user by the seller, shall not be included in the base for measuring any fee, tax, surcharge, or other charge that is imposed by the Commonwealth, any political subdivision of the Commonwealth, or any intergovernmental agency.

D. The prepaid wireless E-911 charge shall be increased or decreased proportionately, as applicable, upon any change made by the General Assembly to the wireless E-911 surcharge. Such increase or reduction shall be effective on the effective date of the change to the wireless E-911 surcharge or such other date as may be established by the General Assembly. The Department shall use its best efforts to provide at least 30 days of advance notice, on the Department's website, of such increase or reduction.

E. Prepaid wireless E-911 charges collected by sellers shall be remitted to the Department at the times and in the manner provided by the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) with respect to sales tax. The Department shall establish registration and payment procedures that are substantially similar to the registration and payment procedures that apply to the sales tax. A seller shall be permitted to deduct and retain five percent of prepaid wireless E-911 charges that are collected by the seller from end users if such charges were not delinquent at the time of remittance to the Department. The audit and appeal procedures applicable to sales tax under the Virginia Retail Sales and Use Tax Act shall apply to prepaid wireless E-911 charges. Nothing herein shall be construed or interpreted as limiting or restricting the discount provided under § 58.1-622 with regard to prepaid CMRS that is taxable under the Virginia Retail Sales and Use Tax Act.

182     Any person or entity holding (i) a valid certificate of exemption issued by the Department or (ii) a  
183     valid self-executing certificate of exemption that exempts the person or entity from payment of sales and  
184     use taxes under the Virginia Retail Sales and Use Tax Act shall be exempt from the charge imposed  
185     under this section on their purchases of prepaid CMRS in retail transactions provided that such  
186     purchases are in accordance with the terms of the certificate of exemption. In addition, the Department  
187     shall establish procedures by which a seller of prepaid CMRS may document that a sale is not a retail  
188     transaction, which procedures shall be substantially similar to the procedures for documenting sale for  
189     resale transactions for sales tax under the Virginia Retail Sales and Use Tax Act.

190     The Department shall deposit all remitted prepaid wireless E-911 charges into the state treasury  
191     within 30 days of receipt. The Comptroller shall as soon as practicable deposit such moneys into the  
192     Wireless E-911 Fund for use by the Board in accordance with the purposes permitted by this article.

193     F. The provisions of this section shall apply to retail transactions occurring on or after January 1,  
194     2011.

195     **2. That the provisions of this act shall become effective on January 1, 2011.**