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SENATE BILL NO. 441

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 15, 2010)

(Patron Prior to Substitute—Senator Saslaw)

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.

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 Fund.

"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 \$0.75 billed with respect to postpaid CMRS by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary

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60 use in Virginia; provided, however, that any fee collected or paid pursuant to the third paragraph of
61 subsection B of § 56-484.17 is not required to be billed.

62 § 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

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

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

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

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

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

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

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

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

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

115 D. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall audit the
116 grant funding received by all recipients to ensure it was utilized in accordance with the grant
117 requirements. For the fiscal year ending June 30, 2005, the Board shall determine whether qualifying
118 payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were
119 less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or
120 CMRS provider. Each funding recipient shall provide such verification of such costs as may be
121 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:

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

"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 dealer from an end user in the amount established under subsection B.

"Retail transaction" means the purchase of prepaid CMRS from a dealer 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.

B. The prepaid wireless E-911 charge:

1. Shall be \$0.50 per retail transaction.

2. Shall be collected by the dealer 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 dealer or otherwise disclosed by the dealer 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 dealer 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. Shall be paid by the dealer to the Department, and the dealer shall be liable for payment of the prepaid wireless E-911 charge. The prepaid wireless E-911 charge thereafter shall be a debt from the end user to the dealer until paid and shall be recoverable at law in the same manner as other debts. The dealer's liability for payment shall include all prepaid wireless E-911 charges that the dealer is deemed to have collected in cases in which the charge has not been separately stated on an invoice, receipt, or other similar document provided to the end user by the dealer.

C. The amount of the prepaid wireless E-911 charge that is collected by a dealer from an end user 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. Except as otherwise expressly provided herein, the charge imposed pursuant to this section shall be collected by the Tax Commissioner and shall be implemented, enforced, and collected in the same manner as retail sales and use taxes are implemented, enforced, and collected under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). A dealer shall be permitted to deduct and retain five percent of prepaid wireless E-911 charges that are collected by the dealer from end users if such charges were not delinquent at the time of remittance to the Department. 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.

The Department, after subtracting its direct costs of administration, shall deposit all remitted prepaid wireless E-911 charges into the state treasury. The Comptroller shall as soon as practicable deposit such moneys into the Wireless E-911 Fund for use by the Board in accordance with the purposes permitted by this article.

E. The Department shall develop and publish guidelines implementing the provisions of this section and shall update the guidelines as deemed necessary by the Tax Commissioner. The Tax Commissioner shall notify every dealer holding a certificate of registration under § 58.1-613 when the guidelines and any updates are published. The development and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Among other items, the guidelines shall include provisions exempting "small dealers," as defined solely by the Department, from the otherwise mandatory requirement under this section to disclose the prepaid wireless E-911 charge to the end user. The guidelines shall define a "small dealer" based, in

183 *part or in whole, upon the extent to which the dealer sells prepaid CMRS.*

184 *F. The provisions of this section shall apply to retail transactions occurring on or after January 1,*
185 *2011.*

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

187 **3. That in lieu of collecting the prepaid wireless E-911 charge from end users as provided under**
188 **this act, a dealer may absorb such charges and shall become solely liable for the same on all sales**
189 **of prepaid CMRS in retail transactions, provided that the Tax Commissioner has granted to the**
190 **dealer a written authorization to absorb the prepaid wireless E-911 charge on all sales made by**
191 **the dealer of prepaid CMRS in retail transactions and such authorization provides a temporary**
192 **period for which the dealer shall be permitted to absorb the prepaid wireless E-911 charge.**
193 **Nothing herein shall be construed or interpreted as allowing the dealer to advertise or hold out to**
194 **the public, directly or indirectly, that (i) the dealer will absorb all or any part of such charges or**
195 **(ii) he will relieve the end user of payment of the same.**