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SENATE BILL NO. 97

Offered January 13, 2010

Prefiled January 6, 2010

A BILL to amend and reenact §§ 9.1-400, 56-484.12, and 58.1-1730 of the Code of Virginia, relating to the Line of Duty Act; definitions; funding for the Line of Duty Death and Health Benefits Trust Fund.

Patrons—Quayle, McWaters and Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-400, 56-484.12, and 58.1-1730 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state or local employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

§ 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.

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

60 "Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to
61 § 2.2-2005.

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

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

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

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

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

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

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

79 "Place of primary use" has the meaning as defined in the federal Mobile Telecommunications
80 Sourcing Act, 4 U.S.C. § 124, as amended.

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

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

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

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

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

96 "Wireless E-911 surcharge" means a monthly fee of \$0.75 billed by each CMRS provider and CMRS
97 reseller on each CMRS number of a customer with a place of primary use in Virginia; provided,
98 however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17 is
99 not required to be billed. *An additional surcharge of \$0.05 shall be billed, collected and remitted in the*
100 *same manner as the \$0.75 fee as specified in § 56-484.17, except that such funds collected shall be*
101 *deposited directly to the Line of Duty Death and Health Benefits Trust Fund established pursuant to*
102 *Item 262B of Chapter 3 of the 2006 Acts of Assembly, Special Session I.*

103 § 58.1-1730. Tax for enhanced 911 service; definitions.

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

105 "Access lines" are defined to include residence and business telephone lines and other switched
106 (packet or circuit) lines connecting the customer premises to the public switched telephone network for
107 the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other
108 multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network
109 Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public
110 switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax
111 charges for every ISDN Primary Rate Interface network facility established by the customer. Other
112 channelized services in which each voice-grade channel is controlled by the telecommunications provider
113 shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public
114 switched telephone network. Access lines do not include local, state, and federal government lines;
115 access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate
116 and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines
117 internally provided and used by providers of telecommunications services for administrative, testing,
118 intercept, coin, and verification purposes; and commercial mobile radio service.

119 "Automatic location identification" or "ALI" means a telephone network capability that enables the
120 automatic display of information defining the geographical location of the telephone used to place a

wireline 9-1-1 call.

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

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"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 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.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of \$0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C. *An additional surcharge of \$0.05 shall be billed, collected and remitted in the same manner as the \$0.75 fee except that such funds collected shall be deposited directly to the Line of Duty Death and Health Benefits Trust Fund established pursuant to Item 262B of Chapter 3 of the 2006 Acts of Assembly, Special Session I.*

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § 58.1-647.

D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.