

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 571\*  
Committee Substitute Favorable 5/18/11  
PROPOSED COMMITTEE SUBSTITUTE H571-PCS70228-TDf-46

Short Title: Prepaid Wireless/Point of Sale Collection.

(Public)

Sponsors:

Referred to:

March 31, 2011

1  
2 A BILL TO BE ENTITLED  
3 AN ACT IMPOSING A SERVICE CHARGE ON EACH RETAIL TRANSACTION OF  
4 PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR ANY PURPOSE  
5 OTHER THAN RESALE OCCURRING IN THIS STATE, REQUIRING THAT THE  
6 SERVICE CHARGE BE COLLECTED BY THE SELLER OF PREPAID WIRELESS  
7 TELECOMMUNICATIONS SERVICE AND REMITTED TO THE DEPARTMENT OF  
8 REVENUE, AND PROVIDING THAT THE DEPARTMENT OF REVENUE SHALL  
9 TRANSFER ALL SERVICE CHARGES COLLECTED, MINUS THE COSTS OF  
10 COLLECTION, TO THE 911 FUND TO SUPPORT 911 SERVICES IN THE STATE.

11 The General Assembly of North Carolina enacts:

12 SECTION 1.(a) G.S. 62A-43(b) reads as rewritten:

13 "(b) Prepaid Wireless. – ~~A voice communications service provider of prepaid wireless~~  
14 ~~telephone service must collect and remit to the 911 Board the monthly service charge imposed~~  
15 ~~upon prepaid wireless telephone subscribers in the State under one of the following methods:~~

- 16 (1) ~~Collecting the service charge from each active prepaid wireless telephone~~  
17 ~~service subscriber whose account balance is equal to or greater than the~~  
18 ~~amount of the service charge.~~  
19 (2) ~~Dividing the provider's total earned prepaid wireless telephone service~~  
20 ~~revenue received for the month from each active prepaid wireless telephone~~  
21 ~~service subscriber by fifty dollars (\$50.00) and multiplying the quotient by~~  
22 ~~the amount of the service charge. The monthly service charge for 911 service~~  
23 ~~is not imposed on prepaid wireless telephone service."~~

24 SECTION 1.(b) This section is effective when it becomes law.

25 SECTION 2. G.S. 62A-40 reads as rewritten:

26 "§ 62A-40. Definitions.

27 The following definitions apply in this Article.

28 ...

- 29 (15) Prepaid wireless ~~telephone~~ telecommunications service. – A wireless  
30 telecommunications service that allows a caller to dial 911 to access the 911  
31 system, which service must be paid for in advance and is sold in  
32 predetermined units or dollars of which the number declines with use in a  
33 known amount. A right that meets all of the following requirements:



\* H 5 7 1 - P C S 7 0 2 2 8 - T D F - 4 6 \*

- 1 a. ~~Authorizes the purchase of CMRS, either exclusively or in~~  
 2 ~~conjunction with other services.~~  
 3 b. ~~Must be paid for in advance.~~  
 4 c. ~~Is sold in units or dollars whose number or dollar value declines with~~  
 5 ~~use and is known on a continuous basis.~~

6 ...  
 7 (18a) Retail transaction. – The sale of prepaid wireless telecommunications service  
 8 for any purpose other than resale."

9 **SECTION 3.** G.S. 62A-43, as amended by Section 1 of this act, reads as rewritten:

10 "**§ 62A-43. Service charge for 911 service.**

11 (a) Charge Imposed. – A monthly 911 service charge is imposed on each active voice  
 12 communications service connection that is capable of accessing the 911 system. The service  
 13 charge for service other than prepaid wireless telecommunications service is seventy cents  
 14 (70¢) or a lower amount set by the 911 Board under subsection (d) of this section. The service  
 15 charge is payable by the subscriber to the voice communications service provider. The provider  
 16 may list the service charge separately from other charges on the bill. Partial payments made by  
 17 a subscriber are applied first to the amount the subscriber owes the provider for the voice  
 18 communications service.

19 (b) Prepaid Wireless. –~~The monthly service charge for 911 service is not imposed on~~  
 20 ~~prepaid wireless service. A 911 service charge is imposed on each retail purchase of prepaid~~  
 21 wireless telecommunications service occurring in this State of seventy cents (70¢) for each  
 22 retail transaction of prepaid wireless telecommunications service or a lower amount set as  
 23 provided by subsection (d) of this section. The service charge is collected and remitted as  
 24 provided in G.S. 62A-54.

25 (c) Remittance to 911 Board. – A voice communications service provider must remit  
 26 the service charges collected by it under subsection (a) of this section to the 911 Board. The  
 27 provider must remit the collected service charges by the end of the calendar month following  
 28 the month the provider received the charges from its subscribers. A provider may deduct and  
 29 retain from the service charges it receives from its subscribers and remits to the 911 Board an  
 30 administrative allowance equal to the greater of one percent (1%) of the amount of service  
 31 charges remitted or fifty dollars (\$50.00) a month.

32 (d) Adjustment of Charge. – The 911 Board must monitor the revenues generated by the  
 33 service charge charges imposed by this section. If the 911 Board determines that the ~~rate~~  
 34 ~~produces~~rates produce revenue that exceeds or is less than the amount needed, the 911 Board  
 35 may adjust the ~~rate rates.~~ The ~~rate rates~~ must ensure full cost recovery for voice  
 36 communications service providers and for primary PSAPs over a reasonable period of time.  
 37 The 911 Board must set the service charge for prepaid wireless telecommunications service at  
 38 the same rate as the monthly service charge for nonprepaid service. A change in the amount of  
 39 the rate becomes effective only on July 1. The 911 Board must notify providers of a change in  
 40 the rate rates at least 90 days before the change becomes effective. The 911 Board must notify  
 41 the Department of Revenue of a change in the rate for prepaid wireless telecommunications  
 42 service at least 90 days before the change becomes effective. The Department of Revenue must  
 43 provide notice of a change in the rate for prepaid wireless telecommunications service at least  
 44 45 days before the change becomes effective only on the Department's Web site.

45 ...."

46 **SECTION 4.** G.S. 62A-44(b) reads as rewritten:

47 "(b) Allocation of Revenues. – The 911 Board may deduct and retain for its  
 48 administrative expenses a percentage of the total service charges remitted to it under  
 49 G.S. 62A-43 for deposit in the 911 Fund. The percentage may not exceed two percent (2%).  
 50 The percentage is one percent (1%) unless the 911 Board sets the percentage at a different  
 51 amount. The 911 Board must monitor the amount of funds required to meet its financial

1 commitment to provide technical assistance to primary PSAPs and set the rate at an amount  
2 that enables the 911 Board to meet this commitment. The remaining revenues remitted to the  
3 911 Board for deposit in the 911 Fund are allocated as follows:

- 4 (1) A percentage of the funds remitted by CMRS ~~providers~~ providers, other than  
5 the funds remitted by the Department of Revenue from prepaid wireless  
6 telecommunications service, to the 911 Fund are allocated for  
7 reimbursements to CMRS providers pursuant to G.S. 62A-45.
- 8 (2) A percentage of the funds remitted by CMRS ~~providers~~ providers, all funds  
9 remitted by the Department of Revenue from prepaid wireless  
10 telecommunications service, and all funds remitted by all other voice  
11 communications service providers are allocated for monthly distributions to  
12 primary PSAPs pursuant to G.S. 62A-46 and grants to PSAPs pursuant to  
13 G.S. 62A-47.
- 14 (3) The percentage of the funds remitted by CMRS providers allocated to  
15 CMRS providers and PSAPs shall be set by the 911 Board and may be  
16 adjusted by the 911 Board as necessary to ensure full cost recovery for  
17 CMRS providers and, to the extent there are excess funds, for distributions  
18 to primary PSAPs."

19 **SECTION 5.** Article 3 of Chapter 62A of the General Statutes is amended by  
20 adding a new section to read:

21 **"§ 62A-54. Service charge for prepaid wireless telecommunications service; seller collects**  
22 **911 service charge on each retail transaction occurring in this State;**  
23 **remittances to Department of Revenue and transfer to 911 Fund.**

24 (a) Retail Collection. – A seller of prepaid wireless telecommunications service shall  
25 collect the 911 service charge for prepaid wireless telecommunications service from the  
26 consumer on each retail transaction occurring in this State. The 911 service charge for prepaid  
27 wireless telecommunications service is in addition to the sales tax imposed on the sale or  
28 recharge of prepaid telephone calling service under G.S. 105-164.4(4d). The amount of the 911  
29 service charge for prepaid wireless telecommunications service must be separately stated on an  
30 invoice, receipt, or other reasonable notification provided to the consumer by the seller at the  
31 time of the retail transaction. For purposes of this Article, a retail transaction is occurring in this  
32 State if the sale is sourced to this State under G.S.105-164.4B(a).

33 (b) Administrative Allowance; Remittance to Department of Revenue. – A seller may  
34 deduct and retain from the 911 service charges it collects from consumers and remits to the  
35 Department of Revenue an administrative allowance of five percent (5%). A seller shall remit  
36 the 911 service charge for prepaid wireless telecommunications service collected by it under  
37 subsection (a) of this section in either of the following ways:

- 38 (1) Monthly to the Department of Revenue. The service charges collected in a  
39 month are due by the 20th day of the month following the calendar month  
40 covered by the return.
- 41 (2) Semiannually to the Department of Revenue. The service charges collected  
42 in the first six months of the calendar year are due by July 20. The service  
43 charges collected in the second six months of the calendar year are due by  
44 January 20.

45 (c) Administration. – Administration, auditing, requests for review, making returns,  
46 promulgation of rules and regulations by the Secretary of Revenue, additional taxes and liens,  
47 assessments, refunds, and penalty provisions of Article 9 of Chapter 105 of the General Statutes  
48 apply to the collection of the 911 service charge for prepaid wireless telecommunications  
49 service. An audit of the collection of the 911 service charge for prepaid wireless  
50 telecommunications service shall only be conducted in connection with an audit of the taxes  
51 imposed by Article 5 of Chapter 105 of the General Statutes. Underpayments shall be subject to

1 the same interest rate as imposed for taxes under G.S. 105-241.21. Overpayments shall be  
2 subject to the same interest rate as imposed for taxes under G.S. 105-241.21(c)(2). Excessive  
3 and erroneous collections of the service charge will be subject to G.S. 105-164.11. The  
4 Department of Revenue shall establish procedures for a seller of prepaid wireless  
5 telecommunications service to document that a sale is not a retail transaction, and the  
6 procedures established shall substantially coincide with the procedures for documenting a sale  
7 for resale transaction under G.S. 105-164.28. The Secretary of Revenue may retain the costs of  
8 collection from the remittances received under subsection (b) of this section, not to exceed five  
9 hundred thousand dollars (\$500,000) a year of the total 911 service charges for prepaid wireless  
10 telecommunications service remitted to the Department. Within 45 days of the end of each  
11 month in which 911 service charges for prepaid wireless telecommunications service are  
12 remitted to the Department, the Secretary of Revenue shall transfer the total 911 service  
13 charges remitted to the Department less the costs of collection to the 911 Fund established  
14 under G.S. 62A-44.

15 (d) **Liability of Consumer.** – The 911 service charge for prepaid wireless  
16 telecommunications service is the liability of the consumer and not of the seller or of any  
17 provider, except that the seller shall be liable for remitting to the Department of Revenue all  
18 911 service charges for prepaid wireless telecommunications service that the seller collects  
19 from consumers as provided in subsection (b) of this section.

20 **§ 62A-55. Limitation of liability, prepaid wireless.**

21 In addition to the limitation of liability provided in subsection G.S. 62A-53, each provider  
22 and seller of prepaid wireless telecommunications service is entitled to the following  
23 limitations of liability:

24 (1) No provider or seller of prepaid wireless telecommunications service shall  
25 be liable for damages to any person resulting from or incurred in connection  
26 with the provision of or the failure to provide 911 service, or for identifying  
27 or failing to identify the telephone number, address, location, or name  
28 associated with any person or device that is accessing or attempting to access  
29 911 service.

30 (2) No provider or seller of prepaid wireless telecommunications service shall  
31 be liable for damages to any person resulting from or incurred in connection  
32 with the provision of any lawful assistance to any investigative or law  
33 enforcement officer of the United States, this State or any other state, or any  
34 political subdivision of this State or any other state in connection with any  
35 lawful investigation or other law enforcement activity by the law  
36 enforcement officer.

37 **§ 62A-56. Exclusivity of 911 service charge for prepaid wireless telecommunications**  
38 **service.**

39 The 911 service charge for prepaid wireless telecommunications service imposed by this  
40 Article is the only 911 funding obligation imposed with respect to prepaid wireless  
41 telecommunications service in this State, and no tax, fee, surcharge, or other charge shall be  
42 imposed in this State, any subdivision of this State, or any intergovernmental agency for 911  
43 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use,  
44 or provision of prepaid wireless telecommunications service."

45 **SECTION 6.** Chapter 105 of the General Statutes is amended by adding a new  
46 Article to read as follows:

47 "Article 5H.

48 "911 Service Charge for Prepaid Wireless Telecommunications Service.

49 **§ 105-187.70. Department comply with Article 4 of Chapter 62A of the General Statutes.**

50 The Department of Revenue shall comply with the provisions of Article 3 of Chapter 62A  
51 of the General Statutes to receive and transfer to the 911 Fund the 911 service charge for

1 prepaid wireless telecommunications service collected on retail transactions occurring in this  
2 State."

3           **SECTION 7.** Notwithstanding G.S. 62A-60(b), as enacted by Section 5 of this act,  
4 sellers that collect the 911 service charge for prepaid wireless telecommunications service may  
5 retain all of the service charges collected in the first three calendar months beginning on or  
6 after July 1, 2013.

7           **SECTION 8.** Notwithstanding G.S. 62A-60(c), as enacted by Section 5 of this act,  
8 the Department of Revenue may retain the cost of collection not to exceed seven hundred  
9 thousand dollars (\$700,000) of the 911 service charges for prepaid wireless  
10 telecommunications service remitted to it from collections by sellers of the charge for the first  
11 12 calendar months beginning on or after July 1, 2013.

12           **SECTION 9.** Unless otherwise provided, this act becomes effective July 1, 2013,  
13 and applies to all retail transactions occurring in this State, as that term is defined in this act, on  
14 or after that date.