

Introduced by

Senators Cook, Dotzenrod, Hogue

Representatives Headland, Kasper, Thoreson

1 A BILL for an Act to create and enact two new sections to chapter 57-40.6 of the North Dakota  
2 Century Code, relating to the creation of a prepaid wireless emergency 911 fee; to amend and  
3 reenact section 57-40.6-01, subsection 1 of section 57-40.6-02, and sections 57-40.6-03,  
4 57-40.6-08, and 57-40.6-13 of the North Dakota Century Code, relating to prepaid wireless  
5 services and limitation of liability for prepaid wireless service providers or sellers; and to provide  
6 an effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **57-40.6-01. Definitions.**

11 In this chapter, unless the context otherwise requires:

- 12 1. ~~"Active prepaid wireless service" means a prepaid wireless service that has been used~~  
13 ~~by the customer during the month to complete a telephone call for which the~~  
14 ~~customer's card or balance was decremented.~~
- 15 2. "Assessed communications service" means a software service, communication  
16 connection, cable or broadband transport facilities, or a combination of these facilities,  
17 between a billed retail end user and a service provider's network that provides the end  
18 user, upon dialing 911, access to a public safety answering point through a permissible  
19 interconnection to the dedicated 911 network. The term includes telephone exchange  
20 access service, wireless service, ~~active prepaid wireless service~~, and voice over  
21 internet protocol service.
- 22 ~~3-2.~~ "Automated notification system" means that portion of a telecommunications system  
23 that provides rapid notice of emergency situations to the public.
- 24 3. "Commissioner" means the state tax commissioner.

- 1           4. "Communication connection" means a telephone access line, wireless access line,  
2           unique voice over internet protocol service connection, or functional equivalent  
3           uniquely identifiable by a number, internet address, or other designation.
- 4           5. "Consumer" means a person who purchases prepaid wireless service in a retail  
5           transaction.
- 6           ~~5.6.~~ "Emergency services communication system" means a statewide, countywide, or  
7           citywide radio system, land lines communication network, wireless service network, or  
8           enhanced 911 (E911) telephone system, which provides rapid public access for  
9           coordinated dispatching of services, personnel, equipment, and facilities for law  
10          enforcement, fire, medical, or other emergency services.
- 11          ~~6.7.~~ "FCC order" means federal communications commission order 94-102 [961 Federal  
12          Register 40348] and any other FCC order that affects the provision of wireless  
13          enhanced 911 service.
- 14          8. "Prepaid wireless emergency 911 fee" means the fee that is required to be collected  
15          by a seller from a consumer in the amount established under section 4 of this Act.
- 16          ~~7.9.~~ "Prepaid wireless service" means ~~wireless service that is activated in advance by~~  
17          ~~payment for a finite dollar amount of service or for a finite set of minutes that~~  
18          ~~terminates either upon use by a customer and delivery by the wireless provider of an~~  
19          ~~agreed-upon amount of service corresponding to the total dollar amount paid in~~  
20          ~~advance or within a certain period of time following the initial purchase or activation,~~  
21          ~~unless the customer makes additional payments~~any telecommunications service that  
22          provides the right to use a mobile wireless service as well as other  
23          nontelecommunications services, including the download of digital products delivered  
24          electronically, content and ancillary services, which are paid for in advance and sold in  
25          predetermined units or dollars which decline with use in a known amount.
- 26          10. "Prepaid wireless service provider" means any person that provides prepaid wireless  
27          telecommunications service pursuant to a license issued by the federal  
28          communications commission.
- 29          ~~8.11.~~ "Public safety answering point" or "PSAP" means a communications facility or  
30          combination of facilities operated on a twenty-four-hour basis which first receives 911  
31          calls from persons in a 911 service area and which, as appropriate, may directly

1 dispatch public safety services or extend, transfer, or relay 911 calls to appropriate  
2 public safety agencies.

3 ~~9-12.~~ "Public safety answering point service area" means the geographic area for which a  
4 public safety answering point has dispatch and emergency communications  
5 responsibility.

6 ~~10-13.~~ "Public safety telecommunicator" means an individual whose primary full-time or  
7 part-time duties are receiving, processing, and transmitting public safety information  
8 received through an emergency services communication system.

9 14. "Retail transaction" means the purchase of prepaid wireless service from a seller for  
10 any purpose other than resale.

11 15. "Seller" means a person who sells prepaid wireless services to a consumer.

12 ~~11-16.~~ "Subscriber service address" means, for purposes of wire line subscribers, the  
13 address where the telephone subscriber's wire line telephone device is used and, for  
14 purposes of wireless subscribers, the place of primary use, as that term is defined in  
15 section 57-34.1-02.

16 ~~12-17.~~ "Telephone access line" means the principal access to the telephone company's  
17 switched network, including an outward dialed trunk or access register.

18 ~~13-18.~~ "Telephone exchange access service" means service to any wire line telephone  
19 access line identified by a unique telephone number that provides local wire line  
20 access to the telecommunications network to a service subscriber and which enables  
21 the subscriber to access the emergency services communications system by dialing  
22 the digits 9-1-1 on the subscriber's telephone device.

23 ~~14-19.~~ "Unpublished" means information that is not published or available from directory  
24 assistance.

25 ~~15-20.~~ "Voice over internet protocol service" means a service that enables real-time two-way  
26 voice communications; requires a broadband connection from the user's location;  
27 requires internet protocol-compatible customer premises equipment; and permits  
28 users generally to receive calls that originate on the public switched telephone network  
29 and to terminate calls to the public switched telephone network.

1 ~~16-21.~~ "Wireless access line" means each active wireless and prepaid wireless telephone  
2 number assigned to a commercial mobile radio service subscriber, including end users  
3 of resellers.

4 ~~17-22.~~ "Wireless enhanced 911 service" means the service required to be provided by  
5 wireless service providers pursuant to the FCC order.

6 ~~18-23.~~ "Wireless service" means commercial mobile radio service as defined in 47 U.S.C.  
7 332(d)(1) and includes:

- 8 a. Services commonly referred to as wireless; and  
9 b. Services provided by any wireless real-time two-way voice communication  
10 device, including radio-telephone communications used in:  
11 (1) Cellular telephone service;  
12 (2) Personal communications service; or  
13 (3) The functional or competitive equivalent of a radio-telephone  
14 communications line used in cellular telephone service, personal  
15 communications service, or a network radio access line.

16 ~~19-24.~~ "Wireless service provider" means any entity authorized by the federal  
17 communications commission to provide wireless service within this state.

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.6-02 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20 1. The governing body shall adopt a resolution that proposes the adoption of the fee  
21 permitted under this section. The resolution must specify an effective date for the fee  
22 which is no more than two years before the expected implementation date of the  
23 emergency services communication system to be funded by the fee. The resolution  
24 must include a provision for submitting the proposed fee to the electors of the county  
25 or city before the imposition of the fee is effective. The resolution must specify a fee  
26 that does not exceed one dollar and fifty cents per month per communication  
27 connection and must be applied equally upon all assessed communications services.  
28 Prepaid wireless service is not subject to the fee imposed under this section.

29 **SECTION 3. AMENDMENT.** Section 57-40.6-03 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **57-40.6-03. Payment of fee by assessed communications service subscriber or**  
2 **customer.**

3           ~~The assessed communications service provider shall collect the fee from the subscriber or~~  
4 ~~customer of the service.~~

5           1. ~~For prepaid wireless service, the provider shall remit the monthly fee authorized by~~  
6 ~~section 57-40.6-02 based either upon each active prepaid wireless telephone~~  
7 ~~associated with this state for each active prepaid wireless telephone customer that has~~  
8 ~~a sufficient positive balance as of the last day of each month or upon a two percent~~  
9 ~~assessment on the gross revenue received from the sale of prepaid wireless services~~  
10 ~~each month. The provider shall remit the fee in a manner consistent with the provider's~~  
11 ~~existing operating or technological abilities, including by customer address, location~~  
12 ~~associated with the wireless telephone number, or reasonable allocation method~~  
13 ~~based upon other relevant data. The fee amount or an equivalent number of minutes~~  
14 ~~may be reduced from the prepaid customer's account. However, collection of the fee in~~  
15 ~~the manner of a reduction of value or minutes from the prepaid customer's account~~  
16 ~~does not constitute a reduction in the sales price for purposes of taxes that are~~  
17 ~~collected at the point of sale.~~The assessed communications service provider shall  
18 collect the fee authorized under section 57-40.6-02 from the subscriber or customer of  
19 the service.

20           2. For assessed communications service that involves a monthly billing, in the billing  
21 statement or invoice to the subscriber, the provider shall state the amount of the fee  
22 separately.

23           3. For prepaid wireless service, the fee shall be imposed, collected, and administered  
24 according to the provisions of section 4 of this Act. The fee imposed under section 4 of  
25 this Act shall be in lieu of any fees imposed on assessed communication services  
26 under section 57-40.6-02.

27           **SECTION 4.** A new section to chapter 57-40.6 of the North Dakota Century Code is created  
28 and enacted as follows:

29           **Prepaid wireless emergency 911 fee.**

30           1. There is imposed a prepaid wireless emergency 911 fee of two percent on the gross  
31 receipts of sellers from all sales at retail of prepaid wireless services in this state.

- 1           a. A retail transaction that is made, in person, by a consumer at a business location  
2           of the seller shall be treated as occurring in this state if that business location is  
3           in this state. Any other retail transaction shall be treated as occurring in this state  
4           if the retail transaction is treated as occurring in this state under the provisions of  
5           chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.  
6           b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the  
7           commissioner.  
8           c. An entity required to collect and remit the prepaid wireless emergency 911 fee  
9           shall register with the commissioner. The registration shall be made in the form  
10          prescribed by the commissioner, in which the registrant shall identify the name  
11          under which the registrant transacts or intends to transact business, the location  
12          of the business, the federal identification number, and other information as the  
13          commissioner may require.  
14          d. Gross receipts from sales at retail of prepaid wireless services are exempt from  
15          the prepaid wireless emergency 911 fee imposed by this section when the sale is  
16          made to a person entitled to a sales and use tax exemption under subsections 6  
17          or 12 of section 57-39.2-04.  
18          2. The prepaid wireless emergency 911 fee shall be collected by the seller from the  
19          consumer. The amount of the prepaid wireless emergency 911 fee shall be either  
20          separately stated on an invoice, receipt, or other similar document that is provided to  
21          the consumer by the seller, or otherwise disclosed to the consumer.  
22          3. The prepaid wireless emergency 911 fee is the liability of the consumer and not of the  
23          seller or any provider, except that the seller shall be liable to remit all prepaid wireless  
24          emergency 911 fees the seller collects from the consumer, including all fees the seller  
25          is deemed to collect when the amount of the fee has not been separately stated on an  
26          invoice, receipt, or other similar document provided to the consumer by the seller.  
27          4. If the amount of the prepaid wireless emergency 911 fee imposed by this section is  
28          separately stated on an invoice, receipt, or other similar document provided to the  
29          consumer, the prepaid wireless emergency 911 fee may not be included in the base  
30          for measuring any other tax, fee, surcharge, or other charge that is imposed by this  
31          state, any political subdivision of this state, or any intergovernmental agency.

- 1        5. When prepaid wireless service is sold with one or more other products or services for  
2        a single, nonitemized price, then the percentage specified in subsection 1 shall apply  
3        to the entire nonitemized price unless the seller elects to apply the percentage to:  
4        a. The amount of the prepaid wireless service that is disclosed to the consumer as  
5        a dollar amount, including the fee imposed by this section; or  
6        b. The seller identifies the portion of the price that is attributable to the prepaid  
7        wireless service by reasonable and verifiable standards from its books and  
8        records that are kept in the regular course of business.
- 9        6. If a minimal amount of prepaid wireless service is sold with a prepaid wireless device  
10       for a single, nonitemized price, then the seller may elect not to apply the percentage  
11       specified in subsection 1. For purposes of this subsection, an amount of service  
12       denominated as ten minutes or less, or five dollars or less, is minimal.
- 13       7. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales  
14       tax, including provisions for audit, refunds, credits, or rules, not inconsistent with the  
15       provisions of this chapter, govern the administration of the prepaid wireless emergency  
16       911 fee imposed in this chapter.
- 17       8. a. A seller must complete a prepaid emergency 911 fee return reporting the gross  
18       receipts of the seller for prepaid wireless services sold, the amount of the prepaid  
19       wireless emergency 911 fee for the period covered by the return, and any other  
20       information the commissioner may require to enable the seller to correctly  
21       compute and collect the prepaid wireless emergency 911 fee.  
22       b. If the seller is a retailer under chapter 57-39.2, the seller may file the prepaid  
23       emergency 911 fee return and pay the fees due at the same time the sales and  
24       use tax is due under section 57-39.2-11 or 57-39.2-12.  
25       c. The seller required to collect, report, and remit the prepaid wireless  
26       emergency 911 fee imposed under this section shall retain one hundred percent  
27       of the amount of fee due to cover the cost of collecting and transmitting the fee to  
28       the commissioner beginning with the first three months the seller begins selling  
29       prepaid wireless service, or for the first three months after the effective date of  
30       this Act if the seller is making retail sales of prepaid wireless services prior to  
31       January 1, 2014, and shall thereafter retain three percent of the fee.

1       **SECTION 5.** A new section to chapter 57-40.6 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Prepaid wireless emergency 911 fee fund.**

4       All fees, penalties, and other charges collected under section 4 of this Act must be paid to  
5 the commissioner in the form of a remittance payable to the commissioner. The commissioner  
6 shall transmit the fees collected monthly to the state treasurer to be credited to a special fund in  
7 the state treasury, to be known as the prepaid wireless emergency 911 fee fund. The state  
8 treasurer, no less than quarterly, shall pay over the moneys accumulated in the fund to the  
9 governing joint powers entity established pursuant to chapter 54-40.3 for the specific purpose of  
10 implementing emergency communications systems for the state's political subdivisions. The  
11 proceeds from the prepaid wireless emergency 911 fee shall be used specifically for the  
12 implementation, maintenance, or operation of the emergency services communication system.

13       **SECTION 6. AMENDMENT.** Section 57-40.6-08 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15       **57-40.6-08. Emergency services communication system, automated notification**  
16 **system, or emergency instructions - Liability.**

- 17       1. A public agency, public safety agency, assessed communications service provider,  
18 prepaid wireless service provider or seller, or person that provides access to an  
19 emergency services communication system or an automated notification system, or  
20 any officer, agent, or employee of any public agency, public safety agency, assessed  
21 communications service provider, prepaid wireless service provider or seller, or person  
22 is not liable for any civil damages as a result of any act or omission except willful and  
23 wanton misconduct or gross negligence in connection with developing, adopting,  
24 operating, or implementing any plan or system as provided under this chapter.
- 25       2. A person who gives emergency instructions through a system as provided under this  
26 chapter, to persons rendering services in an emergency at another location, or any  
27 person following such instructions in rendering such services, is not liable for any civil  
28 damages as a result of issuing or following the instructions, unless issuing or following  
29 the instructions constitutes willful and wanton misconduct or gross negligence.
- 30       3. This section does not waive, limit, or modify any existing immunity or other defense of  
31 the state or any political subdivision, or any of its agencies, departments,



1 commissions, boards, officers, or employees, nor does it create any claim for relief  
2 against any of these entities.

3 **SECTION 7. AMENDMENT.** Section 57-40.6-13 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **57-40.6-13. Provision of call location information by wireless service provider or**  
6 **prepaid wireless service provider or seller to law enforcement.**

- 7 1. Upon request of a law enforcement agency or a public safety answering point on  
8 behalf of a law enforcement agency, a wireless service provider shall provide call  
9 location information concerning the telecommunications device of a user to the  
10 requesting law enforcement agency or public safety answering point. A prepaid  
11 wireless service provider or seller shall provide such call location information if  
12 available. A law enforcement agency or public safety answering point may not request  
13 information under this section unless for the purposes of responding to a call for  
14 emergency services or in an emergency situation that involves the risk of death or  
15 serious physical harm.
- 16 2. A wireless service provider or prepaid wireless service provider or seller may establish  
17 protocols by which the carrier voluntarily discloses call location information.
- 18 3. A claim for relief may not be brought in any court against any wireless service provider,  
19 prepaid wireless service provider or seller, or any other person for providing call  
20 location information if acting in good faith and under this section.
- 21 4. The bureau of criminal investigation shall obtain contact information from all wireless  
22 service providers authorized to do business in this state to facilitate a request from a  
23 law enforcement agency or a public safety answering point on behalf of a law  
24 enforcement agency for call location information under this section. The bureau shall  
25 disseminate the contact information to each public safety answering point in this state.

26 **SECTION 8. EFFECTIVE DATE.** This Act is effective for taxable periods beginning after  
27 December 31, 2013.