

House Bill 256 (COMMITTEE SUBSTITUTE)

By: Representatives Willard of the 49<sup>th</sup>, Martin of the 47<sup>th</sup>, Abrams of the 84<sup>th</sup>, Taylor of the 79<sup>th</sup>, Riley of the 50<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 4 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia  
2 Annotated, relating to the emergency telephone number 9-1-1 system, so as to provide for  
3 the comprehensive regulation of 9-1-1 charges on prepaid wireless services; to provide for  
4 imposition, collection, and distribution of such charges; to provide for procedures,  
5 conditions, and limitations; to provide for powers, duties, and authority of counties,  
6 municipalities, and the state revenue commissioner; to repeal certain provisions relating to  
7 prepaid wireless service; to provide for related matters; to provide for effective dates; to  
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Part 4 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated,  
12 relating to the emergency telephone number 9-1-1 system, is amended in Code Section  
13 46-5-121, relating to legislative intent regarding 9-1-1 services, by adding a new subsection  
14 to read as follows:

15 "(e) The General Assembly further finds that the collection methodology for prepaid  
16 wireless telecommunications service should effectively capture 9-1-1 charges from prepaid  
17 users. It is the intent of the General Assembly to move the collection of existing 9-1-1  
18 charges on prepaid wireless service to the retail point of sale."

19 **SECTION 2.**

20 Said part is further amended by repealing in its entirety Code Section 46-5-134.2, relating  
21 to 9-1-1 charges for prepaid wireless service.

22 **SECTION 3.**

23 Said part is further amended by adding a new Code section to read as follows:

H. B. 256 (SUB)

"46-5-134.2.

(a) As used in this Code section, the term:

(1) 'Commissioner' means the state revenue commissioner.

(2) 'Consumer' means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(3) 'Department' means the Department of Revenue.

(4) 'Prepaid wireless 9-1-1 charge' means the charge that is required to be collected by a seller from a consumer in the amount established under subsection (b) of this Code section.

(5) 'Prepaid wireless telecommunications service' has the same meaning as prepaid wireless service as such term is defined in Code Section 46-5-122.

(6) 'Provider' means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(7) 'Retail transaction' means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(8) 'Seller' means a person who sells prepaid wireless telecommunications service to another person.

(9) 'Wireless telecommunications service' means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended.

(b)(1) Counties and municipalities that operate a 9-1-1 public safety answering point, including counties and municipalities that operate multijurisdictional or regional 9-1-1 systems or have created a joint authority pursuant to Code Section 46-5-138, are authorized to impose by ordinance or resolution a prepaid wireless 9-1-1 charge in the amount of 75 cents per retail transaction. Imposition of the fee authorized by this Code section by a county or municipality is contingent upon compliance with the requirements of paragraph (1) of subsection (j) of this Code section.

(2) Where a county or municipality that operates a 9-1-1 public safety answering point fails to comply with the requirements of paragraph (1) of subsection (j) of this Code section by December 31, 2011, on and after that date, the prepaid wireless 9-1-1 charge authorized by paragraph (1) of this subsection shall be imposed within the jurisdiction of such counties and municipalities as a state fee for state purposes.

(c) Where a county or municipality imposes a 9-1-1 charge as authorized by paragraph (1) of subsection (b) of this Code section, or the 9-1-1 charge is imposed by the State of Georgia by paragraph (2) of subsection (b) of this Code section, the prepaid wireless 9-1-1 charge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 9-1-1 charge shall

60 be either separately stated on an invoice, receipt, or other similar document that is provided  
61 to the consumer by the seller, or otherwise disclosed to the consumer.

62 (d) For the purposes of subsection (c) of this Code section, a retail transaction that is  
63 effected in person by a consumer at a business location of the seller shall be treated as  
64 occurring in this state if that business location is in this state, and any other retail  
65 transaction shall be treated as occurring in this state if the retail transaction is treated as  
66 occurring in this state for purposes of a prepaid wireless calling service as provided in  
67 paragraph (3) of subsection (e) of Code Section 48-8-77.

68 (e) The prepaid wireless 9-1-1 charge shall be the liability of the consumer and not of the  
69 seller or of any provider, except that the seller shall be liable to remit all prepaid wireless  
70 9-1-1 charges that the seller collects from consumers as provided in this Code section,  
71 including all such charges that the seller is deemed to collect where the amount of the  
72 charge has not been separately stated on an invoice, receipt, or other similar document  
73 provided to the consumer by the seller.

74 (f) The amount of the prepaid wireless 9-1-1 charge that is collected by a seller from a  
75 consumer, if such amount is separately stated on an invoice, receipt, or other similar  
76 document provided to the consumer by the seller, shall not be included in the base for  
77 measuring any tax, fee, surcharge, or other charge that is imposed by this state, any  
78 political subdivision of this state, or any intergovernmental agency.

79 (g) If a minimal amount of prepaid wireless telecommunications service is sold with a  
80 prepaid wireless device for a single, nonitemized price, then the seller may elect not to  
81 apply the amount specified in subsection (b) of this Code section to such transaction. For  
82 purposes of this subsection, the term 'minimal' means an amount of service denominated  
83 as ten minutes or less, or \$5.00 or less.

84 (h) Prepaid wireless 9-1-1 charges collected by sellers shall be remitted to the  
85 commissioner at the times and in the manner provided by Chapter 8 of Title 48 with respect  
86 to the sales and use tax imposed on prepaid wireless calling service. The commissioner  
87 shall establish registration and payment procedures that substantially coincide with the  
88 registration and payment procedures that apply to the sale of prepaid wireless calling  
89 service under Chapter 8 of Title 48. Audit and appeal procedures applicable under  
90 Chapter 8 of Title 48 shall apply to the prepaid wireless 9-1-1 charge. The commissioner  
91 shall establish procedures by which a seller of prepaid wireless telecommunications service  
92 may document that a sale is not a retail transaction, which procedures shall substantially  
93 coincide with the procedures for documenting sale for resale transactions under Chapter 8  
94 of Title 48. Nothing in this Code section shall authorize the commissioner to require that  
95 sellers of prepaid wireless calling services identify, report, or specify the jurisdiction within  
96 which the retail sale of such services occurred.

(i) A seller shall be permitted to deduct and retain 3 percent of prepaid wireless 9-1-1 charges that are collected by the seller from consumers.

(j) Prepaid wireless 9-1-1 charges remitted to the commissioner as provided in this Code section shall be distributed to counties, municipalities, and the State of Georgia as follows:

(1) On or before the December 31 of the year prior to the first year that the fee is imposed, each county and municipal corporation levying the fee, including counties and municipalities levying the fee that operate multijurisdictional or regional 9-1-1 systems or have created a joint authority pursuant to Code Section 46-5-138, shall file with the commissioner a certified copy of the pertinent parts of all ordinances and resolutions and amendments thereto which levy the prepaid wireless 9-1-1 charge authorized by this Code section. The ordinance or resolution specified herein shall specify an effective date of January 1, 2012, and impose a fee in the amount specified in paragraph (1) of subsection (b) of this Code section. The filing required by this paragraph shall be a condition of the collection of the prepaid wireless 9-1-1 charge within any county or municipality.

(2)(A) Each county or municipality operating a public safety answering point that has levied the prepaid wireless 9-1-1 charge authorized by this Code section and complied with the filing requirement of paragraph (1) of this subsection shall receive an amount calculated by multiplying the total amount remitted to the commissioner during the 12 month period ending June 30 times a fraction, the numerator of which is the population of the jurisdiction or jurisdictions operating the public safety answering point and the denominator of which is the total population of the state. An amount calculated by multiplying the total amount remitted to the commissioner during the 12 month period ending June 30 times a fraction, the numerator of which is the total population of any jurisdiction or jurisdictions operating public safety answering points that have not complied with the filing requirement of paragraph (1) of this subsection and the denominator of which is the total population of this state, shall be deposited as provided in paragraph (5) of this subsection.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the initial distribution shall be calculated using the total amount remitted to the commissioner during the six-month period beginning January 1, 2012, and ending June 30, 2012.

(C) For the purposes of this paragraph, population shall be measured by the United States decennial census of 2010 or any future such census plus any corrections or revisions contained in official statements by the United States Bureau of the Census made prior to the first day of September immediately preceding the distribution of the proceeds of such charges by the commissioner and any official census data received by the commissioner from the United States Bureau of the Census or its successor agency

pertaining to any newly incorporated municipality. Such corrections, revisions, or additional data shall be certified to the commissioner by the Office of Planning and Budget on or before August 31 of each year.

(3) Funds shall be distributed annually on or before October 15 of each year. Such distribution shall include any delinquent charges actually collected by the commissioner for a previous fiscal year which have not been previously distributed.

(4) Prior to calculating the distributions to county and municipal governments as provided in this subsection, the commissioner shall subtract an amount, not to exceed 2 percent of remitted charges, to defray the cost of administering and distributing funds from the prepaid wireless 9-1-1 charge. Such amount shall be paid into the general fund of the state treasury.

(5) Funds distributed to a county or municipality pursuant to this Code section shall be deposited and accounted for in a separate restricted revenue fund known as the Emergency Telephone System Fund, maintained by the local government pursuant to paragraph (2) of subsection (d) of Code Section 46-5-134. The commissioner shall deposit all funds received pursuant to paragraph (2) of subsection (b) of this Code section, other than the funds received pursuant paragraph (4) of this subsection, into the general fund of the state treasury in compliance with Article 4 of Chapter 12 of Title 45, the 'Budget Act.' It is the intention of the General Assembly, subject to the appropriation process, that an amount equal to the amount deposited into the general fund of the state treasury as provided in this paragraph be appropriated each year to a program of state grants to counties and municipalities administered by the department for the purpose of supporting the operations of public safety answering points in the improvement of 9-1-1 service delivery. The department shall promulgate rules and regulations for the administration of the 9-1-1 grant program.

(6) Notwithstanding a county's or municipality's failure to comply with the filing requirement of paragraph (1) of this subsection prior to January 1, 2012, a county or municipality that subsequently meets such filing requirements prior to January 1 of any subsequent year shall become eligible to participate in the next succeeding distribution of proceeds pursuant to subparagraph (A) of paragraph (2) of this subsection.

(k)(1) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 9-1-1 or enhanced 9-1-1 service, or for identifying, or failing to identify, the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 9-1-1 or enhanced 9-1-1 service.

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

(3) In addition to the liability provisions of paragraphs (1) and (2) of this subsection, the provisions of Code Section 46-5-135 shall apply to sellers and providers of prepaid wireless telecommunications service.

(1) The prepaid wireless 9-1-1 charge authorized by this Code section shall be the only 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency for 9-1-1 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service."

#### **SECTION 4.**

(a) This section and Section 5 of this Act shall become effective upon their approval by the Governor or upon their becoming law without such approval.

(b) Section 3 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval only for local administrative purposes but in no event shall a fee and charge be imposed prior to January 1, 2012. Section 3 shall become effective for all purposes on January 1, 2012.

(c) Sections 1 and 2 of this Act shall become effective on January 1, 2012.

#### **SECTION 5.**

All laws and parts of laws in conflict with this Act are repealed.