

House Bill 256 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49th, Martin of the 47th, Abrams of the 84th, Taylor of the 79th, Riley of the 50th, 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 style="text-align:center">**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 style="text-align:center">**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 style="text-align:center">**SECTION 3.**

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

24 "46-5-134.2.

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

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

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

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

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

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

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

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

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

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

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

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

55 (c) Where a county or municipality imposes a 9-1-1 charge as authorized by paragraph (1)
56 of subsection (b) of this Code section, or the 9-1-1 charge is imposed by the State of
57 Georgia by paragraph (2) of subsection (b) of this Code section, the prepaid wireless 9-1-1
58 charge shall be collected by the seller from the consumer with respect to each retail
59 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.

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

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

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

112 (2)(A) Each county or municipality operating a public safety answering point that has
113 levied the prepaid wireless 9-1-1 charge authorized by this Code section and complied
114 with the filing requirement of paragraph (1) of this subsection shall receive an amount
115 calculated by multiplying the total amount remitted to the commissioner during the
116 12 month period ending June 30 times a fraction, the numerator of which is the
117 population of the jurisdiction or jurisdictions operating the public safety answering
118 point and the denominator of which is the total population of the state. An amount
119 calculated by multiplying the total amount remitted to the commissioner during the 12
120 month period ending June 30 times a fraction, the numerator of which is the total
121 population of any jurisdiction or jurisdictions operating public safety answering points
122 that have not complied with the filing requirement of paragraph (1) of this subsection
123 and the denominator of which is the total population of this state, shall be deposited as
124 provided in paragraph (5) of this subsection.

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

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

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

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

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

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

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

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

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

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

179 (1) The prepaid wireless 9-1-1 charge authorized by this Code section shall be the only
180 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications
181 service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this
182 state, any political subdivision of this state, or any intergovernmental agency for 9-1-1
183 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase,
184 use, or provision of prepaid wireless telecommunications service."

185 **SECTION 4.**

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

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

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

193 **SECTION 5.**

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