

House Bill 1049 (AS PASSED HOUSE AND SENATE)

By: Representative Willard of the 49th

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, the "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," so as
3 to change its applicability and requirements; to change certain definitions; to correct certain
4 cross-references; to require that Voice over Internet Protocol service suppliers register certain
5 information with the director of emergency management; to require that such information be
6 updated; to change certain provisions relating to subscriber billing and liability and the use
7 of proceeds in the Emergency Telephone System Fund; to provide for notices of delinquency
8 to be sent by the director under certain circumstances; to provide for related matters; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Part 4 of Article 2 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, the
13 "Georgia Emergency Telephone Number 9-1-1 Service Act of 1977," is amended by revising
14 paragraph (12.1) of Code Section 46-5-122, relating to definitions, as follows:

15 ~~"(12.1) 'Prepaid wireless service' means any method pursuant to which a customer pays~~
16 ~~a wireless service provider in advance for a wireless telecommunications connection.~~
17 ~~Such term shall include, without limitation, calling or usage privileges included with the~~
18 ~~purchase of a wireless telephone as well as additional calling or usage privileges~~
19 ~~purchased by any means, including, without limitation, a calling card, a wireless~~
20 ~~communication, or an Internet transaction where a telephone subscriber pays in advance~~
21 for a wireless telecommunications connection:

22 (A) That is sold in predetermined units or dollars:

23 (i) The number of which declines with use in a known amount; and

24 (ii) Which expire without an additional retail purchase of units or dollars;

25 (B) That is not offered in conjunction with other communications services for which
26 the terms permit payment in arrears; and

27 (C) The charges for which are:

28 (i) Not billed to any telephone subscriber or other person; or

29 (ii) Not provided to a telephone subscriber or other person in a monthly statement.

30 Such term shall include, without limitation, calling or usage privileges included with the
 31 purchase of a wireless telephone as well as additional calling or usage privileges
 32 purchased by any means, including, without limitation, a calling card, a call, or an
 33 Internet transaction."

34 **SECTION 2.**

35 Said part is further amended by revising Code Section 46-5-124.1, relating to the requirement
 36 that service suppliers register certain information with the director of emergency
 37 management, updating certain information, and notices of delinquency, as follows:

38 "46-5-124.1.

39 (a) Any service supplier or Voice over Internet Protocol service supplier doing business
 40 in Georgia shall register the following information with the director:

41 (1) The name, address, and telephone number of the representative of the service supplier
 42 or Voice over Internet Protocol service supplier to whom the resolution adopted pursuant
 43 to Code Section 46-5-133 or other notification of intent to provide automatic number
 44 identification or automatic location identification, or both, of a telephone service
 45 connection should be submitted;

46 (2) The name, address, and telephone number of the representative of the service supplier
 47 or Voice over Internet Protocol service supplier with whom a local government must
 48 coordinate to implement automatic number identification or automatic location
 49 identification, or both, of a telephone service connection;

50 (3) The counties in Georgia in which the service supplier or Voice over Internet Protocol
 51 service supplier is authorized to provide telephone service at the time the filing is made;
 52 and

53 (4) Every corporate name under which the service supplier or Voice over Internet
 54 Protocol service supplier is authorized to provide telephone service in Georgia.

55 (b) After the initial submission by each service supplier or Voice over Internet Protocol
 56 service supplier doing business in this state, the information required by subsection (a) of
 57 this Code section shall be updated and submitted to the director by the tenth day of January
 58 and the tenth day of July of each year or such other semiannual schedule as the director
 59 may establish.

60 (c) The director shall send a notice of delinquency to any service supplier or Voice over
 61 Internet Protocol service supplier which fails to comply with subsection (b) of this Code
 62 section. Such notice shall be sent by certified mail or statutory overnight delivery. Any

63 service supplier ~~which~~ or Voice over Internet Protocol service supplier that fails to register
 64 and provide the information required by this Code section within 30 days after receipt of
 65 a notice of delinquency shall not be eligible to receive cost recovery funds as provided in
 66 subsection (e) of Code Section 46-5-134 until the service supplier or Voice over Internet
 67 Protocol service supplier is in compliance with subsection (b) of this Code section."

68 **SECTION 3.**

69 Said part is further amended by revising subsection (e) of Code Section 46-5-134, relating
 70 to subscriber billing and liability, taxes on service, establishment of and the use of proceeds
 71 in the Emergency Telephone System Fund, and records, as follows:

72 "(e)(1) A wireless service supplier may recover its costs expended on the implementation
 73 and provision of wireless enhanced 9-1-1 services to subscribers in an amount not to
 74 exceed 30¢ of each 9-1-1 charge collected from a place of primary use that is within the
 75 geographic area that is served by the local government or would be served by the local
 76 government for the purpose of such emergency 9-1-1 system; provided, however, that
 77 such amount may be increased to 45¢ upon implementation of step two of the state plan
 78 governing 9-1-1 enhanced communications as provided in subsection (g) of this Code
 79 section. Such cost recovery amount shall be based on the actual cost incurred by the
 80 wireless service supplier in providing wireless enhanced 9-1-1 services.

81 (2) A wireless service supplier shall not be authorized to recover any costs under
 82 paragraph (1) of this subsection with respect to any prepaid wireless services."

83 **SECTION 4.**

84 Said part is further amended by revising Code Section 46-5-134.2, relating to prepaid
 85 wireless 9-1-1 charge, definitions, imposition of fee by localities, collection and remission
 86 of charges, and distribution of funds, as follows:

87 "46-5-134.2.

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

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

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

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

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

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

- 98 (6) 'Provider' means a person that provides prepaid wireless ~~telecommunications~~ service
99 pursuant to a license issued by the Federal Communications Commission.
- 100 (7) 'Retail transaction' means the purchase of prepaid wireless ~~telecommunications~~
101 service from a seller for any purpose other than resale.
- 102 (8) 'Seller' means a person who sells prepaid wireless ~~telecommunications~~ service to
103 another person.
- 104 (9) 'Wireless telecommunications service' means commercial mobile radio service as
105 defined by 47 C.F.R. Section 20.3 of ~~Title 47 of the Code of Federal Regulations~~, as
106 amended.
- 107 (b)(1) Counties and municipalities that operate a 9-1-1 public safety answering point,
108 including counties and municipalities that operate multijurisdictional or regional 9-1-1
109 systems or have created a joint authority pursuant to Code Section 46-5-138, are
110 authorized to impose by ordinance or resolution a prepaid wireless 9-1-1 charge in the
111 amount of ~~75 cents~~ 75¢ per retail transaction. Imposition of the ~~fee~~ charge authorized by
112 this Code section by a county or municipality is shall be contingent upon compliance with
113 the requirements of paragraph (1) of subsection (j) of this Code section.
- 114 (2) Where a county or municipality that operates a 9-1-1 public safety answering point
115 fails to comply with the requirements of paragraph (1) of subsection (j) of this Code
116 section by December 31, 2011, on and after that date, the prepaid wireless 9-1-1 charge
117 authorized by paragraph (1) of this subsection shall be imposed within the jurisdiction of
118 such counties and municipalities as a state fee for state purposes.
- 119 (c) Where a county or municipality imposes a prepaid wireless 9-1-1 charge as authorized
120 by paragraph (1) of subsection (b) of this Code section, or the prepaid wireless 9-1-1
121 charge is imposed by the State of Georgia by paragraph (2) of subsection (b) of this Code
122 section, the prepaid wireless 9-1-1 charge shall be collected by the seller from the
123 consumer with respect to each retail transaction occurring in this state. The amount of the
124 prepaid wireless 9-1-1 charge shall be either separately stated on an invoice, receipt, or
125 other similar document that is provided to the consumer by the seller; or otherwise
126 disclosed to the consumer.
- 127 (d) For the purposes of subsection (c) of this Code section, a retail transaction that is
128 effected in person by a consumer at a business location of the seller shall be treated as
129 occurring in this state if that business location is in this state, and any other retail
130 transaction shall be treated as occurring in this state if the retail transaction is treated as
131 occurring in this state for purposes of a prepaid wireless calling service as provided in
132 paragraph (3) of subsection (e) of Code Section 48-8-77.
- 133 (e) The prepaid wireless 9-1-1 charge shall be the liability of the consumer and not of the
134 seller or of any provider, except that the seller shall be liable to remit all prepaid wireless

135 9-1-1 charges that the seller collects from consumers as provided in this Code section,
 136 including all such charges that the seller is deemed to collect where the amount of the
 137 charge has not been separately stated on an invoice, receipt, or other similar document
 138 provided to the consumer by the seller.

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

144 (g)(1) If a minimal amount of prepaid wireless ~~telecommunications~~ service is sold with
 145 a prepaid wireless device for a single, nonitemized price, then the seller may elect not to
 146 apply the amount specified in subsection (b) of this Code section to such transaction.

147 (2) If a minimal amount of prepaid wireless service is separately priced and sold as part
 148 of a single retail transaction that does not contain a prepaid wireless device or another
 149 prepaid wireless service, then the seller may elect not to apply the amount specified in
 150 subsection (b) of this Code section to such transaction.

151 (3) For purposes of this subsection, the term 'minimal' means an amount of service
 152 denominated as ten minutes or less; or \$5.00 or less.

153 (h) Prepaid wireless 9-1-1 charges collected by sellers shall be remitted to the
 154 commissioner at the times and in the manner provided by Chapter 8 of Title 48 with respect
 155 to the sales and use tax imposed on prepaid wireless calling service. The commissioner
 156 shall establish registration and payment procedures that substantially coincide with the
 157 registration and payment procedures that apply to the sale of prepaid wireless calling
 158 service under Chapter 8 of Title 48. Audit and appeal procedures applicable under Chapter
 159 8 of Title 48 shall apply to the prepaid wireless 9-1-1 charge. The commissioner shall
 160 establish procedures by which a seller of prepaid wireless ~~telecommunications~~ service may
 161 document that a sale is not a retail transaction, which procedures shall substantially
 162 coincide with the procedures for documenting sale for resale transactions under Chapter
 163 8 of Title 48. Nothing in this Code section shall authorize the commissioner to require that
 164 sellers of prepaid wireless ~~calling services~~ services identify, report, or specify the
 165 jurisdiction within which the retail sale of such services occurred.

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

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

170 (1) On or before ~~the~~ December 31 of the year prior to the first year that the ~~fee~~ prepaid
 171 wireless 9-1-1 charge is imposed, each county and municipal corporation levying the ~~fee~~

172 prepaid wireless 9-1-1 charge, including counties and municipalities levying the ~~fee~~
 173 prepaid wireless 9-1-1 charge that operate multijurisdictional or regional 9-1-1 systems
 174 or have created a joint authority pursuant to Code Section 46-5-138, shall file with the
 175 commissioner a certified copy of the pertinent parts of all ordinances and resolutions and
 176 amendments thereto which levy the prepaid wireless 9-1-1 charge authorized by this
 177 Code section. The ordinance or resolution specified herein shall specify an effective date
 178 of January 1, 2012, and impose a ~~fee~~ prepaid wireless 9-1-1 charge in the amount
 179 specified in paragraph (1) of subsection (b) of this Code section. The filing required by
 180 this paragraph shall be a condition of the collection of the prepaid wireless 9-1-1 charge
 181 within any county or municipality;

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

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

198 (C) For the purposes of this paragraph, population shall be measured by the United
 199 States decennial census of 2010 or any future such census plus any corrections or
 200 revisions contained in official statements by the United States Bureau of the Census
 201 made prior to the first day of September immediately preceding the distribution of the
 202 proceeds of such charges by the commissioner and any official census data received by
 203 the commissioner from the United States Bureau of the Census or its successor agency
 204 pertaining to any newly incorporated municipality. Such corrections, revisions, or
 205 additional data shall be certified to the commissioner by the Office of Planning and
 206 Budget on or before August 31 of each year;

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

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

215 (5) Funds distributed to a county or municipality pursuant to this Code section shall be
 216 deposited and accounted for in a separate restricted revenue fund known as the
 217 Emergency Telephone System Fund, maintained by the local government pursuant to
 218 paragraph (2) of subsection (d) of Code Section 46-5-134. The commissioner shall
 219 deposit all funds received pursuant to paragraph (2) of subsection (b) of this Code
 220 section, other than the funds received pursuant to paragraph (4) of this subsection, into
 221 the general fund of the state treasury in compliance with Article 4 of Chapter 12 of Title
 222 45, the 'Budget Act.' It is the intention of the General Assembly, subject to the
 223 appropriation process, that an amount equal to the amount deposited into the general fund
 224 of the state treasury as provided in this paragraph be appropriated each year to a program
 225 of state grants to counties and municipalities administered by the department for the
 226 purpose of supporting the operations of public safety answering points in the
 227 improvement of 9-1-1 service delivery. The department shall promulgate rules and
 228 regulations for the administration of the 9-1-1 grant program; and

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

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

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

244 with any lawful investigation or other law enforcement activity by such law enforcement
245 officer.

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

249 (1) The prepaid wireless 9-1-1 charge authorized by this Code section shall be the only
250 9-1-1 funding obligation imposed with respect to prepaid wireless ~~telecommunications~~
251 service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this
252 state, any political subdivision of this state, or any intergovernmental agency for 9-1-1
253 funding purposes upon any provider, seller, or consumer with respect to the sale, purchase,
254 use, or provision of prepaid wireless ~~telecommunications~~ service."

255 **SECTION 5.**

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