

1 SB101
2 126340-1
3 By Senators Marsh and Bedford
4 RFD: Governmental Affairs
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, the Commercial Mobile
9 Radio Service Board levies a service charge on
10 cellular telephones for E-911 service in the amount
11 of 70 cents per month per customer.

12 This bill would lower the amount of the
13 service charge to 65 cents per month.

14 This bill would impose a uniform, statewide
15 prepaid wireless 911 charge on each retail sale of
16 prepaid wireless telecommunications services in the
17 same amount as the E-911 fee per month of regular
18 cell phone service; and would preclude the
19 application of other state and local 911 or E-911
20 charges to the services.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Section 11-98-7 of the Code of Alabama
27 1975, relating to the Commercial Mobile Radio Service Board,

1 to decrease the monthly service charge for E-911 service on
2 cellular telephones; and to add Chapter 98A to Title 11 to the
3 Code of Alabama 1975, to impose a uniform, statewide prepaid
4 wireless 911 charge on the retail sale of prepaid wireless
5 telecommunication services to consumers; and to preclude the
6 application of other state and local 911 or E-911 charges to
7 the services.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 11-98-7 of the Code of Alabama
10 1975, is amended to read as follows:

11 "§11-98-7.

12 "(a) There is created a Commercial Mobile Radio
13 Service (CMRS) Board, consisting of seven members who shall be
14 citizens of this state and shall reflect the racial, gender,
15 geographic, urban and rural, and economic diversity of the
16 state.

17 "(1) The first five members of the board, each of
18 whom shall serve for a term of four years, shall be appointed
19 by the Governor, subject to confirmation by the Senate, as
20 follows:

21 "a. Two members recommended by the ECDs.

22 "b. Two members recommended by CMRS providers
23 licensed to do business in Alabama.

24 "c. One member recommended by the State Auditor.

25 "(2) The next two members of the board, each of whom
26 shall serve for a term of four years, shall be appointed as
27 follows:

1 "a. One member of the House of Representatives
2 appointed by the Speaker of the House.

3 "b. One member of the Senate appointed by the
4 Lieutenant Governor.

5 "(3) The term of each member shall be four years,
6 except that of the members first appointed, one representing
7 ECDs shall serve for three years and one representing CMRS
8 providers shall serve for three years, one representing ECDs
9 shall serve two years and one representing CMRS providers
10 shall serve two years. The Governor shall designate the term
11 which each of the members first appointed shall serve when he
12 or she makes appointments. The two legislative members shall
13 serve for the length of their elective service, but no more
14 than four years.

15 "(4) In the event of a vacancy, a vacancy shall be
16 filled for the balance of the unexpired term in the same
17 manner as the original appointment. Any vacancy occurring on
18 the board, whether for an expired or unexpired term, shall be
19 filled by appointment by the appointing authority as soon as
20 practicable after a vacancy occurs, whether for an expired or
21 unexpired term.

22 "(5) For all terms expiring after October 1, 2007,
23 appointments made by the Governor shall be subject to
24 confirmation by the Senate as provided in this subdivision.
25 Appointments made at times when the Senate is not in session
26 shall be effective immediately ad interim and shall serve
27 until the Senate acts on the appointment as provided herein.

1 Any appointment made by the Governor while the Senate is in
2 session shall be submitted to the Senate not later than the
3 third legislative day following the date of the appointment.
4 Any appointment made while the Senate is not in session shall
5 be submitted not later than the third legislative day
6 following the reconvening of the Legislature. In the event the
7 Senate fails or refuses to act on the appointment, the person
8 whose name was submitted shall continue to serve until action
9 is taken on the appointment by the Senate.

10 "(b) The board shall have the following powers and
11 duties:

12 "(1) To levy a CMRS emergency telephone service
13 charge on each CMRS connection that has a place of primary use
14 within the geographical boundaries of the State of Alabama.
15 The rate of the CMRS service charge shall be ~~seventy cents~~
16 ~~(\$.70)~~ sixty-five cents (\$0.65) per month per CMRS customer on
17 each CMRS connection beginning on May 1, 1998, which amount
18 shall not be increased except by the Legislature. The CMRS
19 service charge shall have uniform application and shall be
20 imposed throughout the state. The board shall receive all
21 revenues derived from the CMRS service charge levied in the
22 state and collected pursuant to Section 11-98-8.

23 "(2) To establish and maintain the CMRS Fund as an
24 insured, interest-bearing account into which the board shall
25 deposit all revenues derived from the CMRS service charge
26 levied on CMRS connections and collected pursuant to Section
27 11-98-8. The revenues deposited into the CMRS Fund shall not

1 be moneys or property of the state and shall not be subject to
2 appropriation by the Legislature.

3 "(3) To make disbursements from the CMRS Fund in the
4 following amounts and in the following manner:

5 "a. Out of the funds collected by the board and
6 after deduction of administrative expenses, 56 percent shall
7 be distributed to ECDs in accordance with the distribution
8 formula and may only be used for the lease, purchase, or
9 maintenance of wireless enhanced emergency telephone
10 equipment, including necessary computer hardware, software,
11 and data base provisioning, for incremental expenses directly
12 related to the FCC Order and the handling of wireless
13 emergency calls.

14 "b. Beginning on October 1, 2007, 24 percent shall
15 be distributed to ECDs in accordance with Section 11-98-7.1.

16 "c. Twenty percent shall be deposited into a bank
17 account and shall be used solely for the purpose of payment of
18 the actual costs incurred by CMRS providers in complying with
19 the wireless E-911 service requirements established by the FCC
20 Order and any rules and regulations which are or may be
21 adopted by the FCC pursuant to the FCC Order, including, but
22 not limited to, costs and expenses incurred for designing,
23 upgrading, purchasing, leasing, programming, installing,
24 testing, or maintaining all necessary data, hardware, and
25 software required in order to provide the service as well as
26 the incremental costs of operating the service. Verified
27 itemized statements shall be presented to the board in

1 connection with any request for payment by any CMRS provider
2 and shall be approved by a majority vote of the board prior to
3 any disbursement. Approval shall not be withheld or delayed
4 unreasonably. In no event shall any invoice be approved for
5 the payment of costs that are not related to compliance with
6 the wireless E-911 service requirements established by the FCC
7 Order and any rules and regulations which are or may be
8 adopted by the FCC pursuant to the FCC Order.

9 "d. Beginning no later than October 1, 2007, and no
10 later than each October 1 thereafter, each CMRS provider
11 wishing to participate in the payments provided in paragraph
12 c. for expenses related to the providing of Phase II Enhanced
13 911 Service shall certify to the board that it does not then
14 collect a cost-recovery or other similar separate charge from
15 its customers. CMRS providers failing to provide such
16 certification by October 1 shall be ineligible to receive such
17 payments for any such Phase II expenses incurred until such
18 certificate is provided to the board. Any CMRS provider
19 electing to collect cost-recovery or other similar separate
20 charges at any time following its October 1 certification
21 shall immediately notify the board and shall be ineligible to
22 participate in the payments established in this subsection
23 until ceasing such collection from its customers and providing
24 the notice required herein. This requirement shall only apply
25 to payments for expenses related to the provision of Phase II
26 Enhanced 911 Services.

1 "e. In the event that there are wireless emergency
2 telephone services which cannot be efficiently performed at
3 the ECD level or there are expenses which cannot be properly
4 allocated at the ECD level, any ECD or CMRS provider may
5 submit invoices directly to the board and the board shall
6 determine the smallest practical unit basis for joint
7 implementation.

8 "(4) To obtain, pursuant to subdivision (5), from an
9 independent, third-party auditor retained by the board a copy
10 of the annual reports to the Department of Examiners of Public
11 Accounts no later than 120 days after the close of each fiscal
12 year, which shall provide an accounting for all CMRS service
13 charges deposited into the CMRS Fund during the preceding
14 fiscal year and all disbursements to ECDs during the preceding
15 fiscal year. The Department of Examiners of Public Accounts
16 shall conduct an annual audit of the expenditures of the board
17 from all CMRS service charges from the CMRS Fund.

18 "(5) To retain, upon majority vote of the members of
19 the board who are present and voting, an independent,
20 third-party auditor for the purposes of receiving,
21 maintaining, and verifying the accuracy of any and all
22 information, including all proprietary information, that is
23 required to be collected, or that may have been submitted to
24 the board by CMRS providers and ECDs, and the accuracy of the
25 collection of the CMRS service charge required to be
26 collected. An audit, if conducted pursuant to this

1 subdivision, shall be conducted pursuant to Chapter 2A of
2 Title 40.

3 "(6) To conduct a cost study on or before July 1,
4 1999, to be submitted to the Governor, the Lieutenant
5 Governor, and the Speaker of the House of Representatives for
6 the purpose of determining whether legislation should be
7 proposed during the 2000 Regular Session of the Alabama
8 Legislature to adjust the amount of the CMRS service charge to
9 reflect actual costs to be incurred by CMRS providers and ECDs
10 in order to comply with the wireless E-911 service
11 requirements established by the FCC Order and any rules and
12 regulations which are or may be adopted by the FCC pursuant to
13 the FCC Order.

14 "(7) To promulgate such rules and regulations as may
15 be necessary to effect the provisions of this section.

16 "(8) To make the determinations and disbursements as
17 provided by Section 11-98-8(c).

18 "(9) Neither the board nor any ECD shall require the
19 CMRS providers to select or to deploy particular commercial
20 solutions to meet the requirements of the FCC Order, provided
21 the solutions chosen are compatible with the operations of the
22 ECDs.

23 "(c) The CMRS service charge provided in subdivision
24 (b)(1) shall be the sole charge assessed to CMRS providers
25 relating to emergency telephone services.

26 "(d) The board shall serve without compensation,
27 provided, however, that members of the board shall be entitled

1 to be reimbursed for actual expenses and travel costs
2 associated with their service.

3 "(e) Nothing in this chapter shall be construed to
4 constitute the regulation of the entry of or rates charged by
5 CMRS providers for any service or feature which they provide
6 to their CMRS service customers, or to prohibit a CMRS
7 provider from charging a CMRS service customer for any service
8 or feature provided to the customer.

9 "(f) Subsection (k) of Section 40-21-121 shall apply
10 to the CMRS emergency telephone service charge imposed in this
11 section.

12 "(g) The board shall be subject to the Alabama
13 Sunset Law under Chapter 20 of Title 41, shall be classified
14 an enumerated agency under Section 41-20-3, and shall
15 terminate on October 1, 2000, and every four years thereafter,
16 unless continued as therein provided. If continued, the board
17 shall be reviewed every four years thereafter and terminated
18 unless continued into law."

19 Section 2. Chapter 98A is added to Title 11 of the
20 Code of Alabama 1975, to read as follows:

21 §11-98A-1. Short title.

22 This chapter may be cited as the Prepaid Wireless
23 911 Charge Act of 2011.

24 §11-98A-2. Definitions.

25 When used in this chapter, the following terms shall
26 have the following meanings:

1 (1) CONSUMER. A person who purchases prepaid
2 wireless telecommunications service in a retail transaction.

3 (2) DEPARTMENT. The Department of Revenue of the
4 State of Alabama.

5 (3) PREPAID WIRELESS 911 CHARGE. The charge that is
6 required to be collected by a seller from a consumer in the
7 amount established under Section 11-98A-4.

8 (4) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE. A
9 wireless telecommunications service that allows a caller to
10 dial 911 to access the 911 system, which service must be paid
11 for in advance and is sold in predetermined units or dollars
12 of which the number declines with use in a known amount.

13 (5) PROVIDER. A person that provides prepaid
14 wireless telecommunications service pursuant to a license
15 issued by the Federal Communications Commission.

16 (6) RETAIL TRANSACTION. The purchase of prepaid
17 wireless telecommunications service from a seller for any
18 purpose other than resale.

19 (7) SELLER. A person who sells prepaid wireless
20 telecommunications service to another person.

21 (8) WIRELESS TELECOMMUNICATIONS SERVICE. Commercial
22 mobile radio service as defined by Section 20.3 of Title 47 of
23 the Code of Federal Regulations, as amended.

24 §11-98A-3. Purpose.

25 The Legislature finds that maintaining effective and
26 efficient 911 systems across the state benefits all citizens,

1 including users of prepaid wireless telecommunications
2 services.

3 §11-98A-4. Collection and remittance of prepaid
4 wireless 911 charge.

5 (a) There is imposed a prepaid wireless 911 charge
6 on each retail transaction for the purchase of wireless
7 telecommunications service in the same amount as the charge
8 per month on E-911 service as provided in Section
9 11-98-7(b) (1) .

10 (b) The prepaid wireless 911 charge shall be
11 collected by the seller from the consumer with respect to each
12 retail transaction occurring in this state. The amount of the
13 prepaid wireless 911 charge shall be either separately stated
14 on an invoice, receipt, or other similar document that is
15 provided to the consumer by the seller, or otherwise disclosed
16 to the consumer.

17 (c) For purposes of subsection (b), a retail
18 transaction that is effected in person by a consumer at a
19 business location of the seller shall be treated as occurring
20 in this state if that business location is in this state, and
21 any other transaction shall be treated as occurring in this
22 state if the retail transaction is treated as occurring in
23 this state for purposes of Chapter 23 of Title 40.

24 (d) The prepaid wireless 911 charge is the liability
25 of the consumer and not of the seller or of any provider,
26 except that the seller shall be liable to remit all prepaid
27 wireless 911 charges that the seller collects from consumers

1 as provided in Section 11-98A-5, including all charges that
2 the seller is deemed to collect where the amount of the charge
3 has not been separately stated on an invoice, receipt, or
4 other similar document provided to the consumer by the seller.

5 (e) The amount of the prepaid wireless 911 charge
6 that is collected by a seller from a consumer, if the amount
7 is separately stated on an invoice, receipt, or other similar
8 document provided to the consumer by the seller, shall not be
9 included in the base for measuring any tax, fee, surcharge, or
10 other charge that is imposed by this state, any political
11 subdivision of this state, or any intergovernmental agency.

12 (f) The prepaid wireless 911 charge shall be
13 increased or decreased, as applicable, upon any change to the
14 rate specified in Section 11-98-7(b)(1). The increase or
15 decrease shall be effective on the effective date of the
16 change to the postpaid charge or, if later, the first day of
17 the first calendar month to occur at least 60 days after the
18 enactment of the change to the rate specified in Section
19 11-98-7(b)(1). The department shall provide not less than 30
20 days of advance notice of the increase or decrease on the
21 department's website.

22 §11-98A-5. Administration of prepaid wireless 911
23 charge.

24 (a) Prepaid wireless 911 charges collected by
25 sellers shall be remitted to the department at the times and
26 in the manner provided by Chapter 23 of Title 40. The
27 department shall establish registration and payment procedures

1 that substantially coincide with the registration and payment
2 procedures that apply to Chapter 23 of Title 40.

3 (b) A seller shall be permitted to deduct and retain
4 four percent of prepaid wireless 911 charges that are
5 collected by the seller from consumers.

6 (c) The audit and appeal procedure applicable to
7 Chapter 23 of Title 40 shall apply to prepaid wireless 911
8 charges.

9 (d) The department shall establish procedures by
10 which a seller of prepaid wireless telecommunications service
11 may document that a sale is not a retail transaction, which
12 procedures shall substantially coincide with the procedures
13 for documenting sales for resale transactions for sales and
14 use tax purposes under Chapter 23 of Title 40.

15 (e) The department shall pay all remitted prepaid
16 wireless 911 charges to the Commercial Mobile Radio Services
17 Board within 30 days of receipt, for use by the board in
18 accordance with the purposes permitted by Section 11-98A-7,
19 after deducting an amount, not to exceed two percent of
20 collected charges, that shall be retained by the department to
21 reimburse its direct costs of administering the collection and
22 remittance of prepaid wireless 911 charges.

23 §11-98A-6. Liability.

24 (a) No provider or seller of prepaid wireless
25 telecommunications service shall be liable for damages to any
26 person resulting from or incurred in connection with the
27 provision of, or failure to provide, 911 or E-911 service, or

1 for identifying, or failing to identify, the telephone number,
2 address, location, or name associated with any person or
3 device that is accessing or attempting to access 911 or E-911
4 service.

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

13 §11-98A-7. Exclusivity of prepaid wireless 911
14 charge.

15 The prepaid wireless 911 charge imposed by this
16 chapter shall be the only 911 funding obligation imposed with
17 respect to prepaid wireless telecommunications service in this
18 state, and no tax, fee, surcharge, or other charge shall be
19 imposed by this state, any political subdivision of this
20 state, or any intergovernmental agency, for 911 funding
21 purposes, upon any provider, seller, or consumer with respect
22 to the sale, purchase, use, or provision of prepaid wireless
23 telecommunications service.

24 Section 3. This act shall become effective October
25 1, 2011.