

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

195T0631

SENATE STATE AFFAIRS ENGROSSED NO. **SB 174** - 2/8/2012

Introduced by: Senators Brown, Bradford, Frerichs, Hansen (Tom), Heineman, Juhnke, Olson (Russell), Peters, Putnam, Schlekeway, Tidemann, Tieszen, and Vehle and Representatives Cronin, Abdallah, Gibson, Hunhoff (Bernie), Rozum, and White

1 FOR AN ACT ENTITLED, An Act to increase the 911 emergency surcharge, to revise the
2 collection and distribution of the surcharge revenue, to provide for point of sale collection
3 of the prepaid wireless 911 emergency surcharge, and to provide funding for the upgrade of
4 911 emergency services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 34-45-2 be amended to read as follows:

7 34-45-2. ~~The governing body of a public corporation may by ordinance authorize a 911~~
8 ~~emergency reporting system. The ordinance shall include a description of the proposed 911~~
9 ~~service area. If the governing body of a public agency had adopted an ordinance authorizing a~~
10 ~~911 emergency reporting system which was in effect on January 1, 2012, the ordinance remains~~
11 ~~in effect for establishing such 911 service area unless amended or repealed by the public agency.~~
12 ~~Any provision in the ordinance establishing a surcharge is no longer in effect after July 1, 2012.~~

13 Section 2. That § 34-45-4 be amended to read as follows:



1 ~~34-45-4. Upon compliance with § 34-45-2, the governing body may assess a A monthly~~
2 ~~uniform charge in an amount not to exceed seventy-five 911 emergency surcharge of one dollar~~
3 ~~and twenty-five cents shall be assessed per service user line. The proceeds of this ~~charge~~~~
4 ~~surcharge shall be used to pay for allowable nonrecurring and recurring costs of the 911 system.~~
5 ~~Any prepaid wireless telecommunications service provider shall remit the 911 emergency~~
6 ~~surcharge for each active prepaid wireless telecommunication service user account to the South~~
7 ~~Dakota 911 coordination fund. The proceeds of the South Dakota 911 coordination fund are~~
8 ~~continuously appropriated for reimbursement of allowable nonrecurring and recurring costs of~~
9 ~~911 service and operating expenses of the board. No such charge No 911 emergency surcharge~~
10 may be imposed upon more than one hundred service user lines or equivalent service, per
11 customer account billed, per month. In the case of multi-station network systems, service user
12 lines shall be equal to the number of calls that can simultaneously be made from such system
13 to the public switched telephone network. No prepaid wireless telecommunications service is
14 subject to the surcharge imposed under this section.

15 Section 3. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 There is hereby imposed a prepaid wireless 911 emergency surcharge of two percent upon
18 the gross receipts of each retail transaction for the purchase of prepaid wireless
19 telecommunications service. The prepaid wireless surcharge shall be collected by the prepaid
20 wireless service seller from the prepaid wireless service consumer during each retail transaction.
21 For purposes of this section, the term, retail transaction, means when the purchase of a prepaid
22 wireless telecommunications service is made in this state or has been determined to be a sale
23 occurring in this state pursuant to § 10-45-108. The amount of the prepaid wireless surcharge
24 shall be separately stated on an invoice, receipt, or other similar document that is provided to

1 the prepaid wireless service consumer by the prepaid wireless service seller. The service
2 consumer is liable to pay the prepaid wireless surcharge imposed by this section. The prepaid
3 wireless service seller is liable to collect and remit all prepaid wireless surcharges imposed by
4 this section. The prepaid wireless service seller is not liable for any prepaid wireless surcharge
5 imposed by this section if the prepaid wireless service seller is unable to collect the surcharge
6 from the service consumer.

7 If the amount of the prepaid wireless surcharge that is imposed by this section is separately
8 stated on an invoice, receipt, or other similar document provided to the prepaid wireless service
9 consumer, the prepaid wireless surcharge may not be included in the base for measuring any
10 other tax, fee, surcharge, or other charge that is imposed by this state or its political
11 subdivisions. If the prepaid wireless telecommunications service is sold with one or more other
12 products or services for a single, non-itemized price, the prepaid wireless surcharge imposed
13 by this section shall apply to the entire non-itemized price unless the prepaid wireless service
14 seller elects to apply the surcharge to:

- 15 (1) The amount of the prepaid wireless telecommunications service that is disclosed to
16 the prepaid wireless service consumer as a dollar amount including the surcharge
17 imposed by this section; or
- 18 (2) The prepaid wireless service seller identifies the portion of the price that is
19 attributable to the prepaid wireless telecommunications service by reasonable and
20 verifiable standards from its books and records that are kept in the regular course of
21 business.

22 Section 4. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any entity required to collect and remit the surcharge imposed pursuant to § 34-45-4 or

1 section 3 of this Act shall register with the Department of Revenue. There is no registration fee.
2 A registration shall be made upon a form prescribed by the secretary of the Department of
3 Revenue and shall set forth the name under which the applicant transacts or intends to transact
4 business, the location of the place of business, and such other information as the secretary may
5 require.

6 The department shall issue an identification number to each applicant. This identification
7 number is not assignable and is valid only for the entity to which it was issued. The
8 identification number is valid until canceled or revoked.

9 Section 5. That § 34-45-5 be amended to read as follows:

10 34-45-5. Any service user in the state is liable for the applicable 911 emergency surcharge
11 pursuant to § 34-45-4. Any telecommunications service provider, wireless telecommunications
12 service provider, or Interconnected Voice over Internet Protocol service provider shall collect
13 and remit to the ~~governing body~~ Department of Revenue the applicable 911 emergency
14 surcharge which shall be stated separately in any billing statement, invoice, or receipt. ~~All~~
15 ~~prepaid wireless telecommunications service providers shall remit the applicable 911 emergency~~
16 ~~surcharge for each active prepaid wireless telecommunication service user account in the state~~
17 ~~to the South Dakota 911 coordination fund. The prepaid wireless telecommunications service~~
18 ~~provider may seek reimbursement from their service user through whatever means are available~~
19 ~~to the provider.~~

20 Section 6. That § 34-45-6.1 be repealed.

21 ~~—34-45-6.1. Notwithstanding any provision of this chapter, no retailer purchasing prepaid~~
22 ~~wireless telecommunication services or devices for resale is required to collect or remit any 911~~
23 ~~emergency surcharge.~~

24 Section 7. That § 34-45-7 be amended to read as follows:

1 34-45-7. Each telecommunications service provider, wireless telecommunications service
2 provider, ~~prepaid wireless telecommunications service provider~~, or Interconnected Voice over
3 Internet Protocol service provider ~~has no obligation to take any legal action to enforce the~~
4 ~~collection of any charge imposed pursuant to this chapter. Such action may be brought by or on~~
5 ~~behalf of the public agency imposing the charge. Each telecommunications service provider,~~
6 ~~wireless telecommunications service provider, prepaid wireless telecommunications service~~
7 ~~provider, or Interconnected Voice over Internet Protocol service provider is not liable for such~~
8 ~~uncollected amounts~~ is liable to collect and remit the 911 emergency surcharges imposed by
9 § 34-45-4. The service user is liable for paying the 911 emergency surcharge imposed by § 34-
10 45-4. The service provider is not liable for any 911 emergency surcharge if the service provider
11 is unable to collect the surcharge from the service user.

12 Section 8. That § 34-45-8 be repealed.

13 ~~—34-45-8. Any charge imposed pursuant to § 34-45-4 and the amounts collected for~~
14 ~~telecommunications service, wireless telecommunications service, or Interconnected Voice over~~
15 ~~Internet Protocol service shall be remitted to the governing body and the amounts collected for~~
16 ~~prepaid wireless telecommunications service shall be remitted to the South Dakota 911~~
17 ~~coordination fund not more than thirty days after the close of the calendar quarter which shall~~
18 ~~include a return to be in such form as required by the board together with the remittance of the~~
19 ~~amount of the charge payable. Each service provider shall maintain a record of collections made~~
20 ~~for a period of one year after the collection.~~

21 Section 9. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Any entity who is registered pursuant to this chapter or any entity required to collect and
24 remit the surcharges imposed by § 34-45-4 or section 3 of this Act shall file returns or reports

1 by electronic means on a monthly basis with the Department of Revenue and shall remit the
2 surcharges by electronic transfer on a monthly basis to the department unless the secretary of
3 the Department of Revenue permits an entity to file returns or reports by nonelectronic means
4 and permits an entity to remit surcharges by nonelectronic means. If an entity does not have
5 internet access on the business premises, the secretary of revenue shall permit an entity to file
6 returns or reports by nonelectronic means and permit an entity to remit surcharges by
7 nonelectronic means.

8 Section 10. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 This section applies to any return, report, or remittance filed pursuant to section 9 of this
11 Act. For any return or report that is required to be filed by electronic means, the return or report
12 shall be filed by electronic means on or before the twenty-third day of the month following each
13 period. If the twenty-third day of the month falls on a Saturday, Sunday, legal holiday
14 enumerated in § 1-5-1, or a day the Federal Reserve Bank is closed, the return or report is due
15 on the next succeeding day that is not a Saturday, Sunday, legal holiday enumerated in § 1-5-1,
16 or a day the Federal Reserve Bank is closed.

17 For any surcharge that is required to be remitted by electronic transfer, the surcharge shall
18 be remitted on or before the second to the last day of the month following each period. For the
19 purpose of remitting any surcharge by electronic transfer pursuant to this section, the last day
20 and the second to the last day of the month means the last day and the second to the last day of
21 the month which are not a Saturday, Sunday, legal holiday enumerated in § 1-5-1, or a day the
22 Federal Reserve Bank is closed.

23 If the secretary of the Department of Revenue permits any entity to file returns or reports by
24 nonelectronic means, permits any entity to remit surcharges by nonelectronic means, or both,

1 pursuant to section 9 of this Act, any return, report, or remittance which is required to be filed
2 pursuant to 9 of this Act is timely filed if mailed, postage prepaid on or before the twentieth day
3 of the month following each period, and is received by the department. A United States Postal
4 Service postmark is evidence of the date of mailing for the purpose of timely filing of returns,
5 reports, or remittances.

6 Penalty or interest under § 10-59-6 shall be paid if a return or remittance is not made on
7 time.

8 Section 11. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The Department of Revenue shall transfer the surcharges collected pursuant to § 34-45-4
11 and section 3 of this Act to the Department of Public Safety. The Department of Public Safety
12 shall remit each month seventy percent of the revenue collected from the 911 emergency
13 surcharges imposed by § 34-45-4 to the public agency, which has adopted an ordinance pursuant
14 to § 34-45-2, where the surcharges were collected. The secretary of the Department of Public
15 Safety shall approve vouchers and the state auditor shall draw warrants to pay each public
16 agency its share of the distribution. The Department of Public Safety shall deposit thirty percent
17 of the revenue collected from the 911 emergency surcharges imposed by § 34-45-4 into the
18 public safety 911 emergency fund created pursuant to section 12 of this Act. The Department
19 of Public Safety shall deposit all of the revenue collected from the prepaid wireless service
20 surcharge imposed by section 3 of this Act into the South Dakota 911 coordination fund created
21 pursuant to § 34-45-12.

22 Section 12. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 There is hereby created within the state treasury the public safety 911 emergency fund. Any

1 money in the public safety 911 emergency fund is continuously appropriated for distribution as
2 provided in this section. A public safety answering point is eligible to receive a distribution from
3 the public safety 911 emergency fund if the public safety answering point is in compliance with
4 the standards for operation and utilization of public safety answering points as determined by
5 the board and either serves a population of more than thirty thousand or covers an area that
6 includes three or more counties. The board shall notify each public safety answering point when
7 the list of public safety answering points eligible for funding pursuant to this section changes.

8 The Department of Public Safety shall:

- 9 (1) Distribute twenty-six percent of the money deposited in the fund based on the ratio
10 of the population of each eligible public safety answering point to the population of
11 all the eligible public safety answering points; and
- 12 (2) Transfer seventy-four percent of the money deposited in the fund to the South Dakota
13 911 coordination fund.

14 The Department of Public Safety shall base the allocation of money for population on the
15 most recent decennial census of the United States Department of Commerce, Bureau of the
16 Census and the population estimate published by the United States Census Bureau for each year
17 ending in five. The Department of Public Safety shall make distributions from the public safety
18 911 emergency fund each quarter. The secretary of the Department of Public Safety shall
19 approve vouchers and the state auditor shall draw warrants to pay each public safety answering
20 point its share of the distribution.

21 Section 13. That § 34-45-9 be amended to read as follows:

22 34-45-9. The service provider and prepaid wireless service seller may deduct and retain ~~one~~
23 two percent of the collected amount or twenty-five dollars, whichever amount is greater, each
24 month as the cost of administration for collecting the ~~charge~~ surcharge imposed by § 34-45-4

1 and section 3 of this Act.

2 Section 14. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The prepaid wireless service seller may retain all the surcharges imposed by section 3 of this
5 Act during the first three months this surcharge is effective. However, the prepaid wireless
6 service seller shall report the collections retained during this month to the Department of
7 Revenue.

8 Section 15. That § 34-45-10 be repealed.

9 ~~34-45-10. At least once every calendar year, prior to September first, the governing body
10 shall review the current charge and establish a rate of charge to be effective on the next January
11 first, not to exceed the amount authorized, that together with any surplus revenues carried
12 forward will produce sufficient revenues to fund the expenditures authorized by §§ 34-45-3 and
13 34-45-4. Any amount collected in excess of expenses within a given year shall be carried
14 forward to the next year. Immediately upon making the determination and fixing the rate, the
15 governing body shall publish its new rate, and it shall notify by registered mail every service
16 provider at least ninety days before the new rate becomes effective. The board or governing
17 body may, at its own expense, require an annual audit of a service provider's books and records
18 concerning the collection and remittance of the charge authorized by §§ 34-45-3 and 34-45-4.~~

19 Section 16. That § 34-45-12 be amended to read as follows:

20 34-45-12. There is hereby created within the state treasury the South Dakota 911
21 coordination fund. Any funds collected from prepaid wireless telecommunications service
22 pursuant to ~~§ 34-45-4~~ section 3 of this Act shall be deposited in the South Dakota 911
23 coordination fund. Any money in the South Dakota 911 coordination fund is continuously
24 appropriated for reimbursement of allowable nonrecurring and recurring costs of 911 service

1 and operating expenses of the board. The board shall authorize disbursements from the fund
2 pursuant to this chapter for the expenses of the board and for approved nonrecurring and
3 recurring costs requested by the governing body of eligible 911 public safety answering points.
4 The board may solicit proposals to coordinate and implement an upgrade to the 911 emergency
5 service system of all public safety answering points. The funds may be disbursed for the purpose
6 of planning, coordinating, purchasing, installing, maintaining, and operating, an upgrade to the
7 911 emergency services system. Any interest earned on money in the fund shall be credited to
8 the fund.

9 Section 17. That § 34-45-17 be amended to read as follows:

10 34-45-17. The 911 emergency reporting system provided by this chapter is within the
11 governmental powers and authority of the governing body or public agency. In contracting for
12 the 911 emergency reporting system or the provisioning of the 911 service, except for willful
13 or wanton negligence or intentional acts, the board, the governing body, the public agency, the
14 service provider, the prepaid wireless service provider, the prepaid wireless service seller, and
15 the service supplier, their employees and agents, are immune from liability for a failure in the
16 use or operation of the 911 system. The immunity provided by this section does not extend to
17 the installation or maintenance of the 911 system.

18 Section 18. That § 34-45-18.2 be amended to read as follows:

19 34-45-18.2. The board may promulgate rules pursuant to chapter 1-26 setting:

- 20 (1) Minimum technical, operational, and procedural standards for the operation and
21 utilization of a public safety answering point;
- 22 (2) Requirements and amounts for reimbursement of recurring and nonrecurring costs;
- 23 (3) Standards for coordination of effective 911 service on a statewide basis; and
- 24 (4) Allowable expenditures of the 911 emergency surcharge proceeds collected pursuant

1 to § 34-45-4.

2 ~~A public safety answering point shall comply with ARSD 50:02:04:02(2) if the Legislature~~
3 ~~increases the monthly uniform charge, regardless of the amount of the increase. Furthermore,~~
4 ~~no public safety answering point may be required to comply with the provisions of ARSD~~
5 ~~50:02:04:02(2) if the public safety answering point forswears the acceptance of revenue from~~
6 ~~any future legislative increase in the monthly uniform charge and formally resolves to continue~~
7 ~~to maintain itself pursuant to all other statutes, rules, and standards~~ No public safety answering
8 point may be required to comply with the provisions of ARSD 50:02:04:02(2), unless the next
9 generation 911 initiative has been implemented. The board shall determine when the next
10 generation 911 initiative is operational. The board shall notify each public safety answering
11 point not complying with the provisions of this rule when this determination has been made.
12 The public safety answering point shall comply with the provisions of the rule within ninety
13 days. However, any public safety answering point that submits a written request to the board to
14 opt out of the provisions of ARSD 50:02:04:02(2) may only receive seventy-five cents of each
15 surcharge assessed pursuant to § 34-45-4 that is to be remitted such public safety answering
16 point. The remaining surcharge assessment shall be deposited in the public safety 911
17 emergency fund.

18 Section 19. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Any service provider collecting and remitting the surcharge imposed by § 34-45-4 or prepaid
21 wireless service seller collecting and remitting the surcharge imposed by section 3 of this Act
22 shall keep records of all receipts and telecommunications service sales. The records are, at all
23 times during business hours of the day, subject to inspection by the Department of Revenue to
24 determine the amount of surcharge due. The records shall be preserved for a period of three

1 years unless the secretary of the Department of Revenue, in writing, authorized their destruction
2 or disposal at an earlier date.

3 Section 20. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The secretary of the Department of Revenue may promulgate rules, pursuant to chapter 1-26,
6 concerning:

- 7 (1) The filing of returns and payment of the surcharges imposed by this chapter;
- 8 (2) Determining the application of the surcharges imposed by this chapter;
- 9 (3) Record-keeping requirements; and
- 10 (4) Determining auditing methods.

11 Section 21. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any person who:

- 14 (1) Makes any false or fraudulent return in attempting to defeat or evade the surcharge
15 imposed by § 34-45-4 or section 3 of this Act is guilty of a Class 1 misdemeanor;
- 16 (2) Fails to pay the surcharge collected pursuant to the provisions of this chapter within
17 sixty days from the date the surcharge becomes due is guilty of a Class 2
18 misdemeanor;
- 19 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
20 to the Department of Revenue for the purpose of examination is guilty of a Class 2
21 misdemeanor;
- 22 (4) Fails to file a return required by this chapter within sixty days from the date the return
23 is due is guilty of a Class 2 misdemeanor;
- 24 (5) Willfully violates any rule of the secretary for the administration and enforcement of

1 the provisions of this chapter is guilty of a Class 2 misdemeanor; or

2 (6) Fails to submit a 911 emergency surcharge registration after having been notified in
3 writing by the secretary of the Department of Revenue that the person is subject to
4 the provisions of this chapter is guilty of a Class 2 misdemeanor. However, it is not
5 a violation of this subdivision if the person submits a registration and meets all
6 lawful prerequisites for registering within ten days from receipt of written notice
7 from the secretary.

8 For purposes of this section, the term, person, includes corporate officers, member-managers
9 or managers of limited liability companies, or partners that control, supervise, or are charged
10 with the responsibility of filing the returns or remitting the payments pursuant to this chapter.

11 Section 22. That § 34-45-1 be amended to read as follows:

12 34-45-1. Terms used in this chapter mean:

13 (1) ~~"Active prepaid wireless telecommunication service user account," a prepaid wireless~~
14 ~~service account:~~

15 ~~———— (a) Which has a sufficient positive balance as of the last day of any month and is~~
16 ~~issued to a person who resides in a zip code, or purchases the service, within~~
17 ~~the state;~~

18 ~~———— (b) As estimated by dividing the total earned prepaid wireless telecommunications~~
19 ~~service revenue received by the service provider within the monthly reporting~~
20 ~~period by the industry's annually calculated average revenue per user as cited~~
21 ~~in the FCC's Annual Report and Analysis of Competitive Market Conditions~~
22 ~~With Respect to Commercial Mobile Services as required under 47 U.S.C.~~
23 ~~§ 332(c)(1)(C); or~~

24 ~~———— (c) Which is a retail sale by a prepaid wireless telecommunications service~~

1 provider to a service user in the state;

2 —(2) "Basic 911," any service which provides the user of a calling device, which utilizes
3 any communications technology, the ability to reach a public safety answering point
4 to report police, fire, medical, or other emergency situations by dialing 911;

5 (3)(2) "Board," the South Dakota 911 Coordination Board created pursuant to § 34-45-18;

6 (4)(3) "Enhanced 911," any system which provides the user of a calling device, which
7 utilizes any communications technology, the ability to reach a public safety
8 answering point by dialing the digits 911, and which routes that call to the
9 appropriate public safety answer point and which automatically provides information
10 about the service user to a 911 dispatcher including the user's name, location, call
11 back number, and assigned emergency responders;

12 (5)(4) "Governing body," the board of county commissioners of a county or the city council
13 or other governing body of a county or municipality or the board of directors of a
14 special district;

15 (6)(5) "Interconnected Voice-over Internet Protocol (VoIP) service," any service with the
16 following characteristics:

- 17 (a) Enables real-time two-way voice communication;
- 18 (b) Requires a broadband connection from the user's location;
- 19 (c) Requires internet protocol-compatible customer premise equipment; and
- 20 (d) Permits users generally to receive calls that originate and terminate on the
21 public switched telephone network;

22 (7)(6) "911 emergency reporting system" or "911 system," any telecommunications service
23 system consisting of network, database, and on-premises equipment which utilizes
24 the single three-digit number 911 for reporting police, fire, medical, or other

1 emergency situation;

2 ~~(8)(7)~~ "911 emergency surcharge," any charge set by ~~the governing body~~ this chapter and

3 assessed on any service user of any telecommunications service, wireless

4 telecommunications service, or Interconnected Voice over Internet Protocol service,

5 ~~or wireless prepaid telecommunications service~~ which physically terminates or

6 originates within the governing body's designated 911 service area. The 911

7 emergency surcharge shall be assessed and remitted for Interconnected Voice over

8 Internet Protocol and wireless telecommunications service based upon the service

9 user's place of primary use. Notwithstanding any other provision of this chapter and

10 for purposes of the surcharge imposed by this chapter, the surcharge imposed upon

11 wireless telecommunication services shall be administered in accordance with 4

12 U.S.C. §§ 116-126. ~~For prepaid wireless telecommunications services, the term, 911~~

13 ~~emergency surcharge, means any charge set and assessed for service provided to an~~

14 ~~active prepaid wireless telecommunications service user account within the state~~

15 ~~provided, however, that with respect to an active prepaid wireless~~

16 ~~telecommunications service user account under subsection 34-45-1(1)(c), the~~

17 ~~surcharge shall be two percent of the retail purchase price of such service;~~

18 ~~(9)(8)~~ "Nonrecurring costs," any capital or start-up expenditure such as telecommunications

19 equipment, software, database, initial training, and the purchase or lease of subscriber

20 names, addresses, and telephone information;

21 ~~(10)(9)~~ "Place of primary use," the street address where the customer's use of the

22 communications service primarily occurs or the customer's registered location

23 on the date the customer is billed;

24 ~~(11)(10)~~ "Prepaid wireless service consumer," any person who purchases prepaid

1 wireless telecommunications service in a retail transaction;

2 (11) "Prepaid wireless service provider," any person that provides prepaid wireless
3 telecommunications service pursuant to a license issued by the Federal
4 Communications Commission;

5 (12) "Prepaid wireless service seller," any person who sells prepaid wireless
6 telecommunications service to prepaid wireless service consumer;

7 (13) "Prepaid wireless telecommunications service," any wireless telecommunications
8 service that is activated in advance by payment for a finite dollar amount of service
9 or for a finite number of minutes that terminate either upon use by any person or
10 within a certain period of time following the initial purchase or activation, unless an
11 additional payment is made any telecommunications service that provides the right
12 to utilize a mobile wireless service as well as other nontelecommunications services,
13 including the download of digital products delivered electronically, content and
14 ancillary services, which are paid for in advance and sold in predetermined units or
15 dollars which decline with use in a known amount;

16 ~~(12)~~(14) "Public agency," any municipality, county, public district, or public authority
17 located in whole or in part within this state which provides or has the authority
18 to provide fire fighting, law enforcement, ambulance, emergency medical, or
19 ~~other emergency services~~ county or municipality that has adopted an ordinance
20 pursuant to § 34-45-2;

21 ~~(13)~~(15) "Public safety answering point," any twenty-four hour communications facility
22 which receives all 911 service calls and reroutes the requestor or information
23 to appropriate public or private safety agencies;

24 ~~(14)~~(16) "Recurring costs," any costs such as network access fee and other telephone

1 charges, software, equipment, database management, maintenance, charges to
2 maintain database of subscriber names, addresses, and telephone information
3 from the local exchange access company. Recurring costs may include
4 personnel expenses for a public safety answering point;

5 ~~(15)~~(17) "Registered location," the most recent information obtained by an
6 Interconnected Voice over Internet Protocol service provider that identifies the
7 physical location of an end user;

8 ~~(16)~~(18) "Service provider," any person or entity providing, offering to provide, or
9 selling telecommunications service, wireless telecommunications service,
10 ~~prepaid wireless telecommunications service~~, or Interconnected Voice over
11 Internet Protocol service;

12 ~~(17)~~(19) "Service supplier," any person or entity who provides or offers to provide 911
13 system equipment, installation, maintenance, or exchange access services
14 within the 911 service access area;

15 ~~(18)~~(20) "Service user," any person who purchases telecommunications service,
16 wireless telecommunications service, ~~prepaid wireless telecommunications~~
17 ~~service~~, or Interconnected Voice over Internet Protocol service in this state
18 without intent for resale;

19 ~~(19)~~(21) "Service user line," the means by which a service user may place a call to a
20 public safety answering point through the use of a telecommunications service,
21 wireless telecommunications service, ~~prepaid wireless telecommunications~~
22 ~~service~~, or Interconnected Voice over Internet Protocol service. In the case of
23 multi-station network systems, service user lines shall be equal to the number
24 of calls that can simultaneously be made from such system to the public

1 switched telephone network;

2 ~~(20)~~(22) "Telecommunications service," the transmission of signs, signals, writings,
3 images, sounds, messages, data, or other information of any nature by wire,
4 radio, lightwave, electromagnetic means, or other similar means. The term
5 does not include the provision of terminal equipment used to originate or
6 terminate such service, broadcast transmissions by radio, television, and
7 satellite stations regulated by the Federal Communications Commission and
8 one-way cable television service;

9 ~~(21)~~(23) "Wireless telecommunications service," commercial mobile radio service, as
10 such term is defined in 47 C.F.R. 203 as of January 1, 2008.

11 Section 23. That § 34-45-20 be amended to read as follows:

12 34-45-20. The board shall:

- 13 (1) Evaluate all of the current public safety answering points and systems throughout the
14 State of South Dakota for their capability to adequately and efficiently administer
15 systems;
- 16 (2) Develop plans for the implementation for a uniform statewide 911 system covering
17 the entire state or so much as is practicable;
- 18 (3) Monitor the number and location of public safety answering points or systems and
19 the use of 911 emergency surcharge funds in their administrative and operational
20 budgets;
- 21 (4) Develop criteria and minimum standards for operating and financing public safety
22 answering points or systems;
- 23 (5) Develop criteria for the eligibility and amount of reimbursement of recurring and
24 nonrecurring costs of public safety answering points or systems;

- 1 (6) Develop criteria for the implementation of performance audits of the use of the 911
2 fees utilized in the operation of the 911 system. The audit shall be conducted by the
3 Department of Legislative Audit and shall be presented to the board and the
4 Legislature; and
- 5 (7) Report annually to the Government Operations and Audit Committee about the
6 operations and findings of the board and any recommendations for changes in the
7 surcharges imposed by this chapter and the distribution of the revenue; and
- 8 (8) Report annually to the Governor and the Legislature about the operations and
9 findings of the board and any recommendations for changes to 911 service in the
10 state.

11 Section 24. That § 34-45-4 be amended to read as follows:

12 34-45-4. ~~Upon compliance with § 34-45-2, the governing body may assess a A monthly~~
13 ~~uniform charge in an amount not to exceed seventy-five cents~~ 911 emergency surcharge of one
14 dollar shall be assessed per service user line. The proceeds of this ~~charge~~ surcharge shall be used
15 to pay for allowable nonrecurring and recurring costs of the 911 system. ~~Any prepaid wireless~~
16 ~~telecommunications service provider shall remit the 911 emergency surcharge for each active~~
17 ~~prepaid wireless telecommunication service user account to the South Dakota 911 coordination~~
18 ~~fund. The proceeds of the South Dakota 911 coordination fund are continuously appropriated~~
19 ~~for reimbursement of allowable nonrecurring and recurring costs of 911 service and operating~~
20 ~~expenses of the board. No such charge~~ No 911 emergency surcharge may be imposed upon more
21 than one hundred service user lines or equivalent service, per customer account billed, per
22 month. In the case of multi-station network systems, service user lines shall be equal to the
23 number of calls that can simultaneously be made from such system to the public switched
24 telephone network. No prepaid wireless telecommunications service is subject to the surcharge

1 imposed under this section.

2 Section 25. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 The Department of Revenue shall transfer the surcharges collected pursuant to § 34-45-4
5 and section 3 of this Act to the Department of Public Safety. The Department of Public Safety
6 shall remit each month eighty-five percent of the revenue collected from the 911 emergency
7 surcharges imposed by § 34-45-4 to the public agency, which has adopted an ordinance pursuant
8 to § 34-45-2, where the surcharges were collected. The secretary of the Department of Public
9 Safety shall approve vouchers and the state auditor shall draw warrants to pay each public
10 agency its share of the distribution. The Department of Public Safety shall deposit fifteen
11 percent of the revenue collected from the 911 emergency surcharges imposed by § 34-45-4 into
12 the public safety 911 emergency fund created pursuant to section 12 of this Act. The Department
13 of Public Safety shall deposit all of the revenue collected from the prepaid wireless service
14 surcharge imposed by section 3 of this Act into the South Dakota 911 coordination fund created
15 pursuant to § 34-45-12.

16 Section 26. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 There is hereby created within the state treasury the public safety 911 emergency fund. Any
19 money in the public safety 911 emergency fund is continuously appropriated for distribution as
20 provided in this section. A public safety answering point is eligible to receive a distribution from
21 the public safety 911 emergency fund if the public safety answering point is in compliance with
22 the standards for operation and utilization of public safety answering points as determined by
23 the board and either has a population of more than thirty thousand or covers an area that
24 includes three or more counties. The board shall notify each public safety answering point when

1 the list of public safety answering points eligible for funding pursuant to this section changes.
2 The Department of Public Safety shall distribute the money deposited in the fund based on the
3 ratio of the population of each eligible public safety answering point to the population of all the
4 eligible public safety answering points.

5 The Department of Public Safety shall base the allocation of money for population on the
6 most recent decennial census of the United States Department of Commerce, Bureau of the
7 Census and the population estimate published by the United States Census Bureau for each year
8 ending in five. The Department of Public Safety shall make distributions from the public safety
9 911 emergency fund each quarter. The secretary of the Department of Public Safety shall
10 approve vouchers and the state auditor shall draw warrants to pay each public safety answering
11 point its share of the distribution.

12 Section 27. That § 10-59-1 be amended to read as follows:

13 10-59-1. The provisions of this chapter may only apply to proceedings commenced under
14 this chapter concerning the taxes, the fees, the surcharges, or the persons subject to the taxes ~~or~~
15 fees, or surcharges imposed by, or any civil or criminal investigation authorized by, chapters 10-
16 33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-46E,
17 10-47B, 10-52, 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, 34-45, and 34A-13 and
18 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

19 Section 28. Sections 24 to 26, inclusive, are effective on July 1, 2018.

20 Section 29. Sections 11 and 12 are repealed on July 1, 2018.