

By Senator Bennett

21-00660-10

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1                                   A bill to be entitled  
2           An act relating to prepaid wireless telecommunications  
3           service; amending s. 365.172, F.S.; revising the  
4           definition of the term "fee"; removing the definition  
5           of the term "prepaid calling arrangements" and  
6           defining the term "prepaid wireless telecommunications  
7           service"; revising powers and duties of the Technology  
8           Program within the Department of Management Services  
9           and the E911 Board to include receiving and managing  
10          funds received from a fee imposed on prepaid wireless  
11          telecommunications service; providing that provisions  
12          for an E911 fee do not apply to such prepaid service;  
13          removing provisions for a study of the feasibility of  
14          collecting a fee for such service; providing  
15          definitions; imposing a prepaid wireless E911 fee on  
16          each retail transaction in this state for prepaid  
17          wireless telecommunications service; providing for  
18          adjustment of the fee when the E911 fee is changed;  
19          requiring the Department of Revenue to notify the  
20          public of any adjustment to the fee; providing for  
21          described retail transactions to be treated as  
22          occurring in this state; providing that the fee is a  
23          liability of the consumer; providing for collection of  
24          the fee by the seller from the consumer; providing for  
25          a statement of the fee to be made by the seller to the  
26          consumer; directing the department to establish  
27          procedures for a seller to document that a sale is not  
28          a retail transaction; providing for the seller to  
29          retain a certain amount of the fees collected and

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30 remit the remaining funds to the department pursuant  
31 to specified provisions; directing the department to  
32 establish registration and payment procedures;  
33 providing for audit and appeal procedures; providing  
34 for distribution and use of the fees collected;  
35 providing that the fee shall not be included in the  
36 base for measuring any tax, fee, surcharge, or other  
37 charge by the state or any governmental agency;  
38 prohibiting a local governmental agency from levying  
39 the fee or an additional fee on providers and sellers  
40 of prepaid wireless telecommunication service for the  
41 provision of E911 service; limiting providers' and  
42 sellers' liability for damages in connection with  
43 provision of 911 or E911 service; limiting providers'  
44 and sellers' liability for damages for providing  
45 assistance to an investigative or law enforcement  
46 officer; amending s. 365.173, F.S.; conforming cross-  
47 references; providing an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Paragraphs (b), (k), and (v) of subsection (3),  
52 subsection (4), paragraph (a) of subsection (5), and subsection  
53 (8) of section 365.172, Florida Statutes, are amended,  
54 subsections (9) through (14) are renumbered as subsections (10)  
55 through (15), respectively, and a new subsection (9) is added to  
56 that section, to read:

57 365.172 Emergency communications number "E911."—

58 (3) DEFINITIONS.—Only as used in this section and ss.

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59 365.171, 365.173, and 365.174, the term:

60 (b) "Authorized expenditures" means expenditures of the  
61 fee, as specified in subsection (10) ~~(9)~~.

62 (k) "Fee" means the E911 fee authorized and imposed under  
63 subsection (8) and the prepaid wireless E911 fee authorized and  
64 imposed under subsection (9).

65 (v) "Prepaid wireless telecommunications service calling  
66 arrangements" means a wireless service that allows a caller to  
67 dial 911 to access the 911 system, which service must be paid  
68 for in advance and is sold in predetermined units or dollars of  
69 which the number declines with use in a known amount ~~has the~~  
70 ~~same meaning as defined in s. 212.05(1)(e)~~.

71 (4) POWERS AND DUTIES OF THE OFFICE.—The office shall  
72 oversee the administration of the fee authorized and imposed on  
73 subscribers of voice communications services under subsection  
74 (8) and shall receive and manage funds transferred by the  
75 Department of Revenue from the fee authorized and imposed on  
76 prepaid wireless telecommunications service under subsection  
77 (9).

78 (5) THE E911 BOARD.—

79 (a) The E911 Board is established to administer, with  
80 oversight by the office, the fee imposed under subsection (8),  
81 including receiving revenues derived from the fee and receiving  
82 revenues transferred by the Department of Revenue from the fee  
83 imposed under subsection (9); distributing portions of the  
84 revenues to wireless providers, counties, and the office;  
85 accounting for receipts, distributions, and income derived by  
86 the funds maintained in the fund; and providing annual reports  
87 to the Governor and the Legislature for submission by the office

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88 on amounts collected and expended, the purposes for which  
89 expenditures have been made, and the status of E911 service in  
90 this state. In order to advise and assist the office in carrying  
91 out the purposes of this section, the board, which shall have  
92 the power of a body corporate, has the powers enumerated in  
93 subsection (6).

94 (8) E911 FEE.—

95 (a) Each voice communications services provider shall  
96 collect the fee described in this subsection. The fee shall not  
97 be assessed on any pay telephone in the state. This subsection  
98 and the fee imposed under this subsection do not apply to  
99 prepaid wireless telecommunications service. Each provider, as  
100 part of its monthly billing process, shall bill the fee as  
101 follows: ~~The fee shall not be assessed on any pay telephone in~~  
102 ~~the state.~~

103 1. Each local exchange carrier shall bill the fee to the  
104 local exchange subscribers on a service-identifier basis, up to  
105 a maximum of 25 access lines per account bill rendered.

106 2. Except in the case of prepaid wireless  
107 telecommunications service, each wireless provider shall bill  
108 the fee to a subscriber on a per-service-identifier basis for  
109 service identifiers whose primary place of use is within this  
110 state. ~~Before July 1, 2009, the fee shall not be assessed on or~~  
111 ~~collected from a provider with respect to an end user's service~~  
112 ~~if that end user's service is a prepaid calling arrangement that~~  
113 ~~is subject to s. 212.05(1)(e).~~

114 a. ~~The board shall conduct a study to determine whether it~~  
115 ~~is feasible to collect E911 fees from the sale of prepaid~~  
116 ~~wireless service. If, based on the findings of the study, the~~

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117 ~~board determines that a fee should not be collected from the~~  
118 ~~sale of prepaid wireless service, it shall report its findings~~  
119 ~~and recommendation to the Governor, the President of the Senate,~~  
120 ~~and the Speaker of the House of Representatives by December 31,~~  
121 ~~2008. If the board determines that a fee should be collected~~  
122 ~~from the sale of prepaid wireless service, the board shall~~  
123 ~~collect the fee beginning July 1, 2009.~~

124 ~~b. For purposes of this section, the term:~~

125 ~~(I) "Prepaid wireless service" means the right to access~~  
126 ~~telecommunications services that must be paid for in advance and~~  
127 ~~is sold in predetermined units or dollars enabling the~~  
128 ~~originator to make calls such that the number of units or~~  
129 ~~dollars declines with use in a known amount.~~

130 ~~(II) "Prepaid wireless service providers" includes those~~  
131 ~~persons who sell prepaid wireless service regardless of its~~  
132 ~~form, either as a retailer or reseller.~~

133 ~~e. The study must include an evaluation of methods by which~~  
134 ~~E911 fees may be collected from end users and purchasers of~~  
135 ~~prepaid wireless service on an equitable, efficient,~~  
136 ~~competitively neutral, and nondiscriminatory basis and must~~  
137 ~~consider whether the collection of fees on prepaid wireless~~  
138 ~~service would constitute an efficient use of public funds given~~  
139 ~~the technological and practical considerations of collecting the~~  
140 ~~fee based on the varying methodologies prepaid wireless service~~  
141 ~~providers and their agents use in marketing prepaid wireless~~  
142 ~~service.~~

143 ~~d. The study must include a review and evaluation of the~~  
144 ~~collection of E911 fees on prepaid wireless service at the point~~  
145 ~~of sale within the state. This evaluation must be consistent~~

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146 ~~with the collection principles of end user charges such as those~~  
147 ~~in s. 212.05(1)(c).~~

148 ~~e. No later than 90 days after this section becomes law,~~  
149 ~~the board shall require all prepaid wireless service providers,~~  
150 ~~including resellers, to provide the board with information that~~  
151 ~~the board determines is necessary to discharge its duties under~~  
152 ~~this section, including information necessary for its~~  
153 ~~recommendation, such as total retail and reseller prepaid~~  
154 ~~wireless service sales.~~

155 ~~f. All subscriber information provided by a prepaid~~  
156 ~~wireless service provider in response to a request from the~~  
157 ~~board while conducting this study is subject to s. 365.174.~~

158 ~~g. The study shall be conducted by an entity competent and~~  
159 ~~knowledgeable in matters of state taxation policy if the board~~  
160 ~~does not possess that expertise. The study must be paid from the~~  
161 ~~moneys distributed to the board for administrative purposes~~  
162 ~~under s. 365.173(2)(f) but may not exceed \$250,000.~~

163 3. Except in the case of prepaid wireless  
164 telecommunications service, all voice communications services  
165 providers not addressed under subparagraphs 1. and 2. shall bill  
166 the fee on a per-service-identifier basis for service  
167 identifiers whose primary place of use is within the state up to  
168 a maximum of 25 service identifiers for each account bill  
169 rendered.

170 4. The provider may list the fee as a separate entry on  
171 each bill, in which case the fee must be identified as a fee for  
172 E911 services. A provider shall remit the fee to the board only  
173 if the fee is paid by the subscriber. If a provider receives a  
174 partial payment for a monthly bill from a subscriber, the amount

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175 received shall first be applied to the payment due the provider  
176 for providing voice communications service.

177 (b) A provider is not obligated to take any legal action to  
178 enforce collection of the fees for which any subscriber is  
179 billed. A county subscribing to 911 service remains liable to  
180 the provider delivering the 911 service or equipment for any 911  
181 service, equipment, operation, or maintenance charge owed by the  
182 county to the provider.

183 (c) For purposes of this section, the state and local  
184 governments are not subscribers.

185 (d) Each provider may retain 1 percent of the amount of the  
186 fees collected as reimbursement for the administrative costs  
187 incurred by the provider to bill, collect, and remit the fee.  
188 The remainder shall be delivered to the board and deposited by  
189 the board into the fund. The board shall distribute the  
190 remainder pursuant to s. 365.173.

191 (e) Effective September 1, 2007, voice communications  
192 services providers billing the fee to subscribers shall deliver  
193 revenues from the fee to the board within 60 days after the end  
194 of the month in which the fee was billed, together with a  
195 monthly report of the number of service identifiers in each  
196 county. Each wireless provider and other applicable provider  
197 identified in subparagraph (a)3. shall report the number of  
198 service identifiers for subscribers whose place of primary use  
199 is in each county. All provider subscriber information provided  
200 to the board is subject to s. 365.174. If a provider chooses to  
201 remit any fee amounts to the board before they are paid by the  
202 subscribers, a provider may apply to the board for a refund of,  
203 or may take a credit for, any such fees remitted to the board

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204 which are not collected by the provider within 6 months  
205 following the month in which the fees are charged off for  
206 federal income tax purposes as bad debt.

207 (f) The rate of the fee shall be set by the board after  
208 considering the factors set forth in paragraphs (h) and (i), but  
209 may not exceed 50 cents per month per each service identifier.  
210 The fee shall apply uniformly and be imposed throughout the  
211 state, except for those counties that, before July 1, 2007, had  
212 adopted an ordinance or resolution establishing a fee less than  
213 50 cents per month per access line. In those counties the fee  
214 established by ordinance may be changed only to the uniform  
215 statewide rate no sooner than 30 days after notification is made  
216 by the county's board of county commissioners to the board.

217 (g) It is the intent of the Legislature that all revenue  
218 from the fee be used as specified in s. 365.173(2)(a)-(i).

219 (h) No later than November 1, 2007, the board may adjust  
220 the allocation percentages for distribution of the fund as  
221 provided in s. 365.173. When setting the percentages and  
222 contemplating any adjustments to the fee, the board shall  
223 consider the following:

224 1. The revenues currently allocated for wireless service  
225 provider costs for implementing E911 service and projected costs  
226 for implementing E911 service, including recurring costs for  
227 Phase I and Phase II and the effect of new technologies;

228 2. The appropriate level of funding needed to fund the  
229 rural grant program provided for in s. 365.173(2)(g); and

230 3. The need to fund statewide, regional, and county grants  
231 in accordance with sub-subparagraph (6)(a)3.b.

232 (i) The board may adjust the allocation percentages or



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233 adjust the amount of the fee, or both, if necessary to ensure  
234 full cost recovery or prevent overrecovery of costs incurred in  
235 the provision of E911 service, including costs incurred or  
236 projected to be incurred to comply with the order. Any new  
237 allocation percentages or reduced or increased fee may not be  
238 adjusted for 1 year. The fee may not exceed 50 cents per month  
239 per each service identifier. The board-established fee, and any  
240 board adjustment of the fee, shall be uniform throughout the  
241 state, except for the counties identified in paragraph (f). No  
242 less than 90 days before the effective date of any adjustment to  
243 the fee, the board shall provide written notice of the adjusted  
244 fee amount and effective date to each voice communications  
245 services provider from which the board is then receiving the  
246 fee.

247 (j) State and local taxes do not apply to the fee.

248 (k) A local government may not levy the fee or any  
249 additional fee on providers or subscribers for the provision of  
250 E911 service.

251 (l) For purposes of this section, the definitions contained  
252 in s. 202.11 and the provisions of s. 202.155 apply in the same  
253 manner and to the same extent as the definitions and provisions  
254 apply to the taxes levied under chapter 202 on mobile  
255 communications services.

256 (9) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.—

257 (a) As used in this subsection, the term:

258 1. "Consumer" means a person who purchases prepaid wireless  
259 telecommunications service in a retail sale.

260 2. "Prepaid wireless E911 fee" means the fee that is  
261 required to be collected by a seller from a consumer in the

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262 amount established under paragraph (b).

263 3. "Provider" means a person who provides prepaid wireless  
264 telecommunications service pursuant to a license issued by the  
265 Federal Communications Commission.

266 4. "Retail transaction" means the purchase of prepaid  
267 wireless telecommunications service from a seller for any  
268 purpose other than resale.

269 5. "Seller" means a person who sells prepaid wireless  
270 telecommunications service to another person.

271 6. "Wireless telecommunications service" means commercial  
272 mobile radio service as defined by 47 C.F.R. s. 20.3, as  
273 amended.

274 (b)1.a. There is imposed a prepaid wireless E911 fee at a  
275 rate of 1 percent of each retail transaction occurring in this  
276 state.

277 b. The prepaid wireless E911 fee imposed under sub-  
278 paragraph a. shall be increased or reduced, as applicable,  
279 upon any change to the E911 fee imposed under subsection (8).  
280 The adjusted rate shall be determined by dividing the amount of  
281 the charge imposed under subsection (8) by \$50. Such increase or  
282 reduction shall be effective on the effective date of the change  
283 to the E911 fee or, if later, the first day of the first  
284 calendar month to occur at least 60 days after the enactment of  
285 such change or notification of a change in the E911 fee as  
286 provided in paragraph (8) (f). The Department of Revenue shall  
287 provide not less than 30 days' notice of such increase or  
288 reduction on its public website.

289 c. For purposes of this subsection, a retail transaction  
290 that is effected in person by a consumer at a business location

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291 of the seller shall be treated as occurring in this state if  
292 that business location is in this state, and any other retail  
293 transaction shall be treated as occurring in this state if the  
294 retail transaction is treated as occurring in this state under  
295 s. 212.05(1)(e)1.a.(II).

296 2. The prepaid wireless E911 fee is the liability of the  
297 consumer and not the seller or any provider.

298 3. The prepaid wireless E911 fee shall be collected by the  
299 seller from the consumer with respect to each retail transaction  
300 occurring in this state. The amount of the fee shall be  
301 separately stated on an invoice, receipt, or other similar  
302 document that is provided to the consumer by the seller or shall  
303 otherwise be disclosed to the consumer.

304 4. The Department of Revenue shall establish procedures for  
305 a seller of prepaid wireless telecommunications service to  
306 document that a sale is not a retail transaction, which  
307 procedures shall substantially coincide with the procedures for  
308 documenting a sale for resale transaction under s. 212.186.

309 5.a. The seller shall remit to the Department of Revenue  
310 all prepaid wireless E911 fees collected under this subsection,  
311 including all such charges that the seller is deemed to have  
312 collected when the amount of the charge was not separately  
313 stated on an invoice, receipt, or other similar document  
314 provided to the consumer by the seller, except that the seller  
315 shall deduct and retain 3 percent of the fees collected.

316 b. The seller shall remit the fees collected to the  
317 Department of Revenue at the times and in the manner provided  
318 under s. 212.11. The Department of Revenue shall establish  
319 registration and payment procedures that substantially coincide

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320 with the registration and payment procedures that apply to the  
321 tax imposed under chapter 212.

322 c. The audit and appeal procedures applicable under s.  
323 212.13 apply to prepaid wireless E911 fees.

324 6. The Department of Revenue shall retain up to 2 percent  
325 of the funds remitted under this subsection to reimburse its  
326 direct costs of administering the collection and remittance of  
327 prepaid wireless E911 fees. Thereafter, the department shall  
328 transfer all remaining funds remitted under this subsection to  
329 the E911 Board within 30 days after receipt for use as provided  
330 in subsection (5).

331 7. The amount of the prepaid wireless E911 fee that is  
332 collected by a seller from a consumer, regardless of whether  
333 such amount is separately stated on an invoice, receipt, or  
334 similar document provided to the consumer by the seller, shall  
335 not be included in the base for measuring any tax, fee,  
336 surcharge, or other charge that is imposed by this state, any  
337 political subdivision of this state, or any governmental agency.

338 8. A local government may not levy the fee or any  
339 additional fee on providers or sellers of prepaid wireless  
340 telecommunications service for the provision of E911 service.

341 (c)1. A provider or seller of prepaid wireless  
342 telecommunications service shall not be liable for damages to  
343 any person resulting from or incurred in connection with the  
344 provision of, or failure to provide, 911 or E911 service or for  
345 identifying, or failing to identify, the telephone number,  
346 address, location, or name associated with any person or device  
347 that is accessing or attempting to access 911 or E911 service.

348 2. A provider or seller of prepaid wireless

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349 telecommunications service shall not be liable for damages to  
350 any person resulting from or incurred in connection with the  
351 provision of any assistance provided by legal process to any  
352 investigative or law enforcement officer of the United States,  
353 this or any other state, or any political subdivision of this or  
354 any other state in connection with any investigation or other  
355 law enforcement activity by such investigative or law  
356 enforcement officer.

357 Section 2. Paragraphs (a), (b), and (c) of subsection (2)  
358 of section 365.173, Florida Statutes, are amended to read:

359 365.173 Emergency Communications Number E911 System Fund.—

360 (2) As determined by the board pursuant to s.  
361 365.172(8)(h), and subject to any modifications approved by the  
362 board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in  
363 the fund shall be distributed and used only as follows:

364 (a) Sixty-seven percent of the moneys in the wireless  
365 category shall be distributed each month to counties, based on  
366 the total number of service identifiers in each county, and  
367 shall be used exclusively for payment of:

368 1. Authorized expenditures, as specified in s.

369 365.172(10)(9).

370 2. Costs to comply with the requirements for E911 service  
371 contained in the order and any future rules related to the  
372 order.

373 (b) Ninety-seven percent of the moneys in the nonwireless  
374 category shall be distributed each month to counties based on  
375 the total number of service identifiers in each county and shall  
376 be used exclusively for payment of authorized expenditures, as  
377 specified in s. 365.172(10)(9).

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378 (c) Any county that receives funds under paragraphs (a) and  
379 (b) shall establish a fund to be used exclusively for the  
380 receipt and expenditure of the revenues collected under  
381 paragraphs (a) and (b). All fees placed in the fund and any  
382 interest accrued shall be used solely for costs described in  
383 subparagraphs (a)1. and 2. The money collected and interest  
384 earned in this fund shall be appropriated for these purposes by  
385 the county commissioners and incorporated into the annual county  
386 budget. The fund shall be included within the financial audit  
387 performed in accordance with s. 218.39. A county may carry  
388 forward up to 20 percent of the total funds disbursed to the  
389 county by the board during a calendar year for expenditures for  
390 capital outlay, capital improvements, or equipment replacement,  
391 if such expenditures are made for the purposes specified in  
392 subparagraphs (a)1. and 2.; however, the 20-percent limitation  
393 does not apply to funds disbursed to a county under s.  
394 365.172(6)(a)3., and a county may carry forward any percentage  
395 of the funds, except that any grant provided shall continue to  
396 be subject to any condition imposed by the board. In order to  
397 prevent an excess recovery of costs incurred in providing E911  
398 service, a county that receives funds greater than the  
399 permissible E911 costs described in s. 365.172 (10) ~~(9)~~, including  
400 the 20 percent carryforward allowance, must return the excess  
401 funds to the E911 board to be allocated under s. 365.172(6)(a).  
402  
403 The Legislature recognizes that the fee authorized under s.  
404 365.172 may not necessarily provide the total funding required  
405 for establishing or providing the E911 service. It is the intent  
406 of the Legislature that all revenue from the fee be used as

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407 specified in this subsection.

408 Section 3. This act shall take effect July 1, 2010.