

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

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

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraphs (b), (k), and (v) of subsection (3),
 49 subsection (4), paragraph (a) of subsection (5), and subsection
 50 (8) of section 365.172, Florida Statutes, are amended,
 51 subsections (9) through (14) are renumbered as subsections (10)
 52 through (15), respectively, and a new subsection (9) is added to
 53 that section, to read:

54 365.172 Emergency communications number "E911."--

55 (3) DEFINITIONS.--Only as used in this section and ss.
 56 365.171, 365.173, and 365.174, the term:

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

59 (k) "Fee" means the E911 fee authorized and imposed under
 60 subsection (8) and the prepaid wireless E911 fee authorized and
 61 imposed under subsection (9).

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

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

75 (5) THE E911 BOARD.--

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

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

91 (8) E911 FEE.--

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

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

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

111 ~~a. The board shall conduct a study to determine whether it~~
 112 ~~is feasible to collect E911 fees from the sale of prepaid~~

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

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

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

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

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

140 ~~d. The study must include a review and evaluation of the~~
141 ~~collection of E911 fees on prepaid wireless service at the point~~
142 ~~of sale within the state. This evaluation must be consistent~~
143 ~~with the collection principles of end user charges such as those~~
144 ~~in s. 212.05(1)(c).~~

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

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

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

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

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167 4. The provider may list the fee as a separate entry on
168 each bill, in which case the fee must be identified as a fee for
169 E911 services. A provider shall remit the fee to the board only
170 if the fee is paid by the subscriber. If a provider receives a
171 partial payment for a monthly bill from a subscriber, the amount
172 received shall first be applied to the payment due the provider
173 for providing voice communications service.

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

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

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

188 (e) Effective September 1, 2007, voice communications
189 services providers billing the fee to subscribers shall deliver
190 revenues from the fee to the board within 60 days after the end
191 of the month in which the fee was billed, together with a
192 monthly report of the number of service identifiers in each
193 county. Each wireless provider and other applicable provider
194 identified in subparagraph (a)3. shall report the number of

195 service identifiers for subscribers whose place of primary use
196 is in each county. All provider subscriber information provided
197 to the board is subject to s. 365.174. If a provider chooses to
198 remit any fee amounts to the board before they are paid by the
199 subscribers, a provider may apply to the board for a refund of,
200 or may take a credit for, any such fees remitted to the board
201 which are not collected by the provider within 6 months
202 following the month in which the fees are charged off for
203 federal income tax purposes as bad debt.

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

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

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

221 1. The revenues currently allocated for wireless service
222 provider costs for implementing E911 service and projected costs

223 for implementing E911 service, including recurring costs for
 224 Phase I and Phase II and the effect of new technologies;

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

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

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

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

245 (k) A local government may not levy the fee or any
 246 additional fee on providers or subscribers for the provision of
 247 E911 service.

248 (l) For purposes of this section, the definitions
 249 contained in s. 202.11 and the provisions of s. 202.155 apply in
 250 the same manner and to the same extent as the definitions and

251 provisions apply to the taxes levied under chapter 202 on mobile
 252 communications services.

253 (9) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.--

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

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

257 2. "Prepaid wireless E911 fee" means the fee that is
 258 required to be collected by a seller from a consumer in the
 259 amount established under paragraph (b).

260 3. "Provider" means a person who provides prepaid wireless
 261 telecommunications service pursuant to a license issued by the
 262 Federal Communications Commission.

263 4. "Retail transaction" means the purchase of prepaid
 264 wireless telecommunications service from a seller for any
 265 purpose other than resale.

266 5. "Seller" means a person who sells prepaid wireless
 267 telecommunications service to another person.

268 6. "Wireless telecommunications service" means commercial
 269 mobile radio service as defined by 47 C.F.R. s. 20.3, as
 270 amended.

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

274 b. The prepaid wireless E911 fee imposed under sub-
 275 subparagraph a. shall be increased or reduced, as applicable,
 276 upon any change to the E911 fee imposed under subsection (8).
 277 The adjusted rate shall be determined by dividing the amount of
 278 the charge imposed under subsection (8) by \$50. Such increase or

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279 reduction shall be effective on the effective date of the change
280 to the E911 fee or, if later, the first day of the first
281 calendar month to occur at least 60 days after the enactment of
282 such change or notification of a change in the E911 fee as
283 provided in paragraph (8) (f). The Department of Revenue shall
284 provide not less than 30 days' notice of such increase or
285 reduction on its public website.

286 c. For purposes of this subsection, a retail transaction
287 that is effected in person by a consumer at a business location
288 of the seller shall be treated as occurring in this state if
289 that business location is in this state, and any other retail
290 transaction shall be treated as occurring in this state if the
291 retail transaction is treated as occurring in this state under
292 s. 212.05(1) (e) 1.a. (II).

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

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

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

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

313 b. The seller shall remit the fees collected to the
314 Department of Revenue at the times and in the manner provided
315 under s. 212.11. The Department of Revenue shall establish
316 registration and payment procedures that substantially coincide
317 with the registration and payment procedures that apply to the
318 tax imposed under chapter 212.

319 c. The audit and appeal procedures applicable under s.
320 212.13 apply to prepaid wireless E911 fees.

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

328 7. The amount of the prepaid wireless E911 fee that is
329 collected by a seller from a consumer, regardless of whether
330 such amount is separately stated on an invoice, receipt, or
331 similar document provided to the consumer by the seller, shall
332 not be included in the base for measuring any tax, fee,

333 surcharge, or other charge that is imposed by this state, any
 334 political subdivision of this state, or any governmental agency.

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

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

345 2. A provider or seller of prepaid wireless
 346 telecommunications service shall not be liable for damages to
 347 any person resulting from or incurred in connection with the
 348 provision of any assistance provided by legal process to any
 349 investigative or law enforcement officer of the United States,
 350 this or any other state, or any political subdivision of this or
 351 any other state in connection with any investigation or other
 352 law enforcement activity by such investigative or law
 353 enforcement officer.

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

356 365.173 Emergency Communications Number E911 System
 357 Fund.--

358 (2) As determined by the board pursuant to s.
 359 365.172 (8) (h), and subject to any modifications approved by the

360 board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in
 361 the fund shall be distributed and used only as follows:

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

366 1. Authorized expenditures, as specified in s.
 367 365.172(10)~~(9)~~.

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

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

376 (c) Any county that receives funds under paragraphs (a)
 377 and (b) shall establish a fund to be used exclusively for the
 378 receipt and expenditure of the revenues collected under
 379 paragraphs (a) and (b). All fees placed in the fund and any
 380 interest accrued shall be used solely for costs described in
 381 subparagraphs (a)1. and 2. The money collected and interest
 382 earned in this fund shall be appropriated for these purposes by
 383 the county commissioners and incorporated into the annual county
 384 budget. The fund shall be included within the financial audit
 385 performed in accordance with s. 218.39. A county may carry
 386 forward up to 20 percent of the total funds disbursed to the
 387 county by the board during a calendar year for expenditures for

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388 capital outlay, capital improvements, or equipment replacement,
389 if such expenditures are made for the purposes specified in
390 subparagraphs (a)1. and 2.; however, the 20-percent limitation
391 does not apply to funds disbursed to a county under s.
392 365.172(6)(a)3., and a county may carry forward any percentage
393 of the funds, except that any grant provided shall continue to
394 be subject to any condition imposed by the board. In order to
395 prevent an excess recovery of costs incurred in providing E911
396 service, a county that receives funds greater than the
397 permissible E911 costs described in s. 365.172(10)(~~9~~), including
398 the 20 percent carryforward allowance, must return the excess
399 funds to the E911 board to be allocated under s. 365.172(6)(a).

400

401 The Legislature recognizes that the fee authorized under s.
402 365.172 may not necessarily provide the total funding required
403 for establishing or providing the E911 service. It is the intent
404 of the Legislature that all revenue from the fee be used as
405 specified in this subsection.

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