

2016 Regular Session

HOUSE BILL NO. 678

BY REPRESENTATIVE CARMODY

TELECOMMUNICATIONS: Provides for the assessment of a surcharge fee on prepaid 911 services and products

1 AN ACT

2 To amend and reenact R.S. 33:9109.1(A) through (D), (F), and (G); relative to charges  
3 imposed on prepaid 911 services and products; to provide for and modify definitions;  
4 to increase the amount of the prepaid 911 charge; to provide for administration of  
5 prepaid 911 charges; to provide for effectiveness; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 33:9109.1(A) through (D), (F), and (G) are hereby amended and  
8 reenacted to read as follows:

9 §9109.1. Prepaid ~~wireless-telecommunications~~ 911 ~~service~~ charge; intent;  
10 definitions; collection and remittance; administration; distribution of funds;  
11 liability; exclusivity

12 A. Intent. (1) The legislature finds that maintaining effective and efficient  
13 911 systems across the state benefits all citizens.

14 (2) ~~Service-charges~~ Charges imposed upon the consumers of  
15 ~~telecommunication services~~ services or products that have the ability to ~~direct~~ access  
16 911 are an important funding mechanism to assist state and local governments with  
17 the deployment of ~~enhanced~~ 911 services to the citizens of this state.

18 (3) Prepaid ~~wireless telecommunication~~ services and products that provide  
19 access to 911 are an important segment of the ~~telecommunications~~ industry and have  
20 proven particularly attractive to low-volume consumers.

1 (4) Unlike traditional telecommunication services, prepaid ~~wireless~~  
2 ~~telecommunications~~ services and products that provide access to 911 are not sold or  
3 used pursuant to term contracts or subscriptions, and monthly bills are not sent to  
4 consumers by prepaid ~~wireless-telecommunication~~ service providers or retail  
5 vendors.

6 (5) Prepaid ~~wireless~~ service and product consumers have ~~the same~~ access to  
7 emergency 911 services from their ~~wireless~~ devices ~~as wireless consumers on term~~  
8 ~~contracts~~, and prepaid ~~wireless~~ service and product consumers benefit from the  
9 ability to access the 911 system ~~by dialing 911~~. Therefore, prepaid ~~wireless~~ service  
10 and product consumers should ~~begin contributing~~ contribute to funding of the 911  
11 emergency communications system.

12 (6) Consumers purchase prepaid ~~wireless-telecommunication~~ services and  
13 products that provide access to 911 at a wide variety of general retail locations and  
14 other distribution channels, not just through service providers. Such purchases are  
15 made on a "cash-and-carry" or "pay-as-you-go" basis from retailers.

16 (7) To ensure equitable contributions to the funding of 911 systems from  
17 consumers of prepaid ~~wireless-telecommunication~~ services and products, the  
18 collection and payment obligation of charges to support ~~E911~~ 911 should be imposed  
19 upon the consumer's retail purchase of the prepaid ~~wireless-telecommunication~~  
20 service or product and should be in the form of a single, statewide charge that is  
21 collected once at the time of purchase directly from the consumer, remitted to the  
22 state, and distributed to communications districts.

23 B. Definitions. As used in this Section, the following words and terms ~~shall~~  
24 have the following meanings, unless the context clearly indicates otherwise:

25 (1) "Consumer" means a person who purchases a prepaid~~wireless~~  
26 ~~telecommunications~~ service or product that provides access to 911 in a retail  
27 transaction.

28 (2) "Department" means the Department of Revenue.

1           (3) ~~"E911"~~ "911" means an emergency telephone system that provides the  
2 caller with emergency 911 system service, that directs 911 calls to appropriate public  
3 safety answering points by selective routing based on the geographical location from  
4 which the call originated, and that provides the capability for automatic number  
5 identification and other features that the Federal Communications Commission may  
6 require in the future.

7           (4) "Prepaid ~~wireless~~ 911 ~~service~~ charge" means the charge that is required  
8 to be collected by a seller from a consumer in the amount established under  
9 Subsection C of this Section.

10           (5) "Prepaid ~~wireless telecommunications~~ service" means a ~~wireless~~  
11 ~~telecommunications service that allows a caller to dial 911 to access the 911 system,~~  
12 commercial mobile radio service as defined by 47 C.F.R. 20.3 in addition to any  
13 other service capable of accessing 911 through the use of voice, text, video, image,  
14 data, or any other means, which service shall be paid for in advance and is sold in  
15 predetermined units or dollars of which the number declines with use in a known  
16 amount.

17           (6) "Provider" means a person that provides a prepaid ~~wireless~~  
18 ~~telecommunications service or product~~ pursuant to a license issued by the Federal  
19 Communications Commission.

20           (7) "Retail transaction" means each individual purchase of a prepaid ~~wireless~~  
21 ~~telecommunications service or product that provides access to 911~~ from a seller for  
22 any purpose other than resale.

23           (8) "Seller" means a person who sells a prepaid ~~wireless telecommunications~~  
24 ~~service or product that provides access to 911~~ to another person.

25           (9) ~~"Wireless telecommunications service" means commercial mobile radio~~  
26 ~~service as defined by 47 C.F.R. 20.3, as amended~~ "Product" means any end user  
27 consumer device that provides access to 911 other than a device that operates on a  
28 commercial mobile radio service as defined by 47 C.F.R. 20.3.

1 C. Collection and remittance of prepaid ~~wireless telecommunications~~ 911  
2 ~~service~~ charge. (1) There is hereby imposed a prepaid ~~wireless telecommunications~~  
3 911 ~~service~~ charge of ~~two~~ four percent of the amount of the per retail transaction.

4 (2) The prepaid ~~wireless~~ 911 ~~service~~ charge shall be collected by the seller  
5 from the consumer with respect to each retail transaction occurring in this state. The  
6 amount of the prepaid ~~wireless~~ 911 ~~service~~ charge shall be either separately stated  
7 on an invoice, receipt, or other similar document that is provided to the consumer by  
8 the seller, or otherwise disclosed to the consumer.

9 (3) For purposes of Paragraph (2) of this Subsection, a retail transaction that  
10 is effected in person by a consumer at a business location of the seller shall be  
11 treated as occurring in this state if that business location is in this state, and any other  
12 retail transaction shall be treated as occurring in this state if the retail transaction is  
13 treated as occurring in this state for purposes of R. S. 47:301(16)(d).

14 (4) The prepaid ~~wireless~~ 911 ~~service~~ charge shall be the liability of the  
15 consumer and not of the seller or of any provider, except that the seller shall be liable  
16 to remit all prepaid ~~wireless~~ 911 ~~service~~ charges that the seller collects from  
17 consumers as provided in Subsection D of this Section, including all such charges  
18 that the seller is deemed to collect where the amount of the charge has not been  
19 separately stated on an invoice, receipt, or other similar document provided to the  
20 consumer by the seller.

21 (5) The amount of the prepaid ~~wireless~~ 911 ~~service~~ charge that is collected  
22 by a seller from a consumer, whether or not such amount is separately stated on an  
23 invoice, receipt, or other similar document provided to the consumer by the seller,  
24 shall not be included in the base for measuring any tax, fee, surcharge, or other  
25 charge that is imposed by this state, any political subdivision of this state, or any  
26 intergovernmental agency.

27 D. Administration of prepaid ~~wireless~~ 911 ~~service~~ charge. (1) Prepaid  
28 ~~wireless~~ 911 ~~service~~ charges collected by sellers shall be remitted to the department  
29 quarterly by the seller and the return for the quarter shall be filed on or before the

1 twentieth day of the first month of the next succeeding quarter. The department shall  
 2 establish electronic registration procedures to enable sellers to file and pay the  
 3 prepaid ~~wireless~~ 911 ~~service~~ charges electronically in accordance with R.S.  
 4 47:1520(A), which authorizes the secretary of the department to mandate electronic  
 5 filing when the report is required for dedicated fund distribution. Sellers shall be  
 6 required to file their prepaid ~~wireless~~ 911 ~~service~~ charge reports and to remit the  
 7 prepaid ~~wireless~~ 911 ~~service~~ charge collection electronically using the electronic  
 8 format prescribed by the department.

9 (2) A seller shall be permitted to deduct and retain ~~the entirety~~ half of the  
 10 ~~2010~~ 2016 ~~first~~ fourth quarter's fees. Thereafter, a seller shall be permitted to deduct  
 11 and retain four percent of prepaid ~~wireless~~ 911 ~~service~~ charges that are collected by  
 12 the seller from consumers.

13 (3) The audit and appeal procedures applicable under Chapter 2 of Subtitle  
 14 I of Title 47 of the Louisiana Revised Statutes of 1950 with respect to the state sales  
 15 tax shall apply to prepaid ~~wireless~~ 911 ~~service~~ charges and prescription shall be  
 16 governed by Article VII, Section 16 of the Constitution of Louisiana.

17 (4) The department shall establish procedures by which a seller of prepaid  
 18 ~~wireless telecommunications~~ 911 service or products may document that a sale is not  
 19 a retail transaction, which procedures shall substantially coincide with the procedures  
 20 for documenting sale for resale transactions under Chapter 2 of Subtitle I of Title 47  
 21 of the Louisiana Revised Statutes of 1950 with respect to the state sales tax.

22 (5) The department shall pay all remitted prepaid ~~wireless~~ 911 ~~service~~  
 23 charges over to eligible communications districts in accordance with Subsection E  
 24 of this Section. The department may retain up to two percent of remitted ~~service~~  
 25 charges to reimburse its direct costs of administering the collection and remittance  
 26 of prepaid ~~wireless~~ 911 ~~service~~ charges.

27 \* \* \*

28 F. Liability. (1) No provider or seller of prepaid ~~wireless telecommunications~~  
 29 service or products shall be liable for damages to any person resulting from or

1 incurred in connection with the provision of, or failure to provide, 911 or E911  
2 service, or for identifying, or failing to identify, the telephone number, address,  
3 location, or name associated with any person or device that is accessing or  
4 attempting to access 911 or E911 service.

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

11 G. Exclusivity of charge. The prepaid ~~wireless E911~~ 911 charge shall be the  
12 only ~~E911~~ 911 funding obligation imposed with respect to prepaid ~~wireless~~  
13 ~~telecommunications~~ service and products in this state, and no tax, fee, surcharge, or  
14 other charge shall be imposed by this state, any political subdivision of this state, or  
15 any intergovernmental agency, for ~~E911~~ 911 funding purposes, upon any provider,  
16 seller, or consumer with respect to the sale, purchase, use, or provision of prepaid  
17 ~~wireless telecommunications~~ 911 service or products.

18 Section 2. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 678 Original

2016 Regular Session

Carmody

**Abstract:** Provides for definitions and increases the amount of the charge being imposed on prepaid 911 services and products.

Present law details the intent of present law.

Present law includes definitions and multiple references that include the terms "wireless", "telecommunications", "wireless telecommunications", and "service charges" relative to describing certain charges, services, and products. Proposed law removes these references and modifies the definitions included in present law. Specifically, proposed law enumerates definitions to include the terms "prepaid 911 charge", "prepaid service", and "product". Proposed law effectually broadens the scope of present law to make certain services and products that provide access to 911 subject to the prepaid 911 charge.

Present law provides procedures for the collection and remittance of prepaid wireless telecommunications 911 service charges. Present law imposes a prepaid wireless telecommunications 911 service charge in the amount of 2% of the amount of the per retail transaction. Proposed law imposes a prepaid 911 charge. Further, proposed law increases the amount of the charge from 2% to 4% of the amount of the per retail transaction. Otherwise, proposed law makes only technical changes to the procedures established by present law relative to the collection and remittance of the prepaid 911 charges for the purpose of incorporating the terms defined in proposed law.

Present law provides for the administration of prepaid wireless 911 service charges. Proposed law amends a reference to a provision of present law regarding the rights of a seller of prepaid 911 services and proposed law allows any seller to deduct and retain half of the 2016 fourth quarter's fees. Otherwise, proposed law makes only technical changes to the procedures established by present law relative to the administration of prepaid 911 charges for the purpose of incorporating the terms defined in proposed law.

Present law provides for limited liability relative to providers and sellers of prepaid wireless telecommunications service. Proposed law makes only technical changes to the provisions of present law relative to liability for the purpose of incorporating the terms defined in proposed law.

Present law provides that the prepaid wireless E911 charge shall be the exclusive funding obligation imposed with respect to prepaid wireless telecommunications service in this state. Proposed law makes only technical changes to the provisions of present law relative to the exclusivity of the charge for the purpose of incorporating the terms defined in proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 33:9109.1(A) through (D), (F), and (G))