

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0830.01 Jery Payne

SENATE BILL 10-120

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SENATE SPONSORSHIP

**White,** Bacon, Steadman

HOUSE SPONSORSHIP

**Rice,** Bradford, McCann

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Senate Committees  
Finance

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE INCLUSION OF PREPAID WIRELESS TELEPHONE  
102 SERVICE AMONG THE SERVICES SUBJECT TO THE SURCHARGE  
103 THAT FUNDS ENHANCED 911 EMERGENCY SERVICES.

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill imposes a 1.4% charge on the retail sale of prepaid wireless telephone service, for use by local 911 authority boards to fund E911 services. The charge is collected and remitted by retail sellers to the department of revenue (department) in the same manner as sales tax is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

collected, after which the department transfers the fee to local 911 call centers in proportion to the number of wireless calls they receive. The bill also protects prepaid wireless sellers against liability for 911-related failures and for assisting law enforcement officers in criminal investigations.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 29-11-101, Colorado Revised Statutes, is amended  
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **29-11-101. Definitions.** As used in this article, unless the context  
5 otherwise requires:

6 (5.5) "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS  
7 WIRELESS TELECOMMUNICATIONS ACCESS THAT ALLOWS A CALLER TO  
8 DIAL 911 TO ACCESS THE 911 SYSTEM, IS PAID FOR IN ADVANCE, AND IS  
9 SOLD IN PREDETERMINED UNITS OR DOLLARS, OF WHICH THE NUMBER OF  
10 UNITS OR DOLLARS AVAILABLE TO THE CALLER DECLINES WITH USE IN A  
11 KNOWN AMOUNT.

12 **SECTION 2.** 29-11-102 (2), Colorado Revised Statutes, is  
13 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

14 **29-11-102. Imposition of charge - liability of user for charge**  
15 **- collection - uncollected amounts - rules.** (2) (e) THIS SUBSECTION (2)  
16 SHALL NOT APPLY TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICES.

17 **SECTION 3.** Part 1 of article 11 of title 29, Colorado Revised  
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
19 read:

20 **29-11-102.5. Imposition of charge on prepaid wireless - rules**  
21 **- definitions.** (1) AS USED IN THIS SECTION:

22 (a) "CONSUMER" MEANS A PERSON WHO PURCHASES PREPAID  
23 WIRELESS TELECOMMUNICATIONS SERVICE IN A RETAIL TRANSACTION.

1 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

2 (c) "PREPAID WIRELESS E911 CHARGE" MEANS THE CHARGE THAT  
3 IS REQUIRED TO BE COLLECTED BY A SELLER FROM A CONSUMER UNDER  
4 SUBSECTION (2) OF THIS SECTION.

5 (d) "PROVIDER" MEANS A PERSON THAT PROVIDES PREPAID  
6 WIRELESS TELECOMMUNICATIONS SERVICE.

7 (e) "RETAIL TRANSACTION" MEANS THE PURCHASE OF PREPAID  
8 WIRELESS TELECOMMUNICATIONS SERVICE FROM A SELLER FOR ANY  
9 PURPOSE OTHER THAN RESALE.

10 (f) "SELLER" MEANS A PERSON WHO SELLS PREPAID WIRELESS  
11 TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

12 (2) (a) A PREPAID WIRELESS E911 CHARGE OF ONE AND  
13 FOUR-TENTHS PERCENT OF THE PRICE OF THE RETAIL TRANSACTION IS  
14 HEREBY IMPOSED ON EACH RETAIL TRANSACTION.

15 (b) (I) THE SELLER SHALL COLLECT THE PREPAID WIRELESS E911  
16 CHARGE FROM THE CONSUMER ON EACH RETAIL TRANSACTION OCCURRING  
17 IN THIS STATE. THE AMOUNT OF THE PREPAID WIRELESS E911 CHARGE  
18 SHALL BE EITHER DISCLOSED TO THE CONSUMER OR SEPARATELY STATED  
19 ON AN INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT THE SELLER  
20 PROVIDES TO THE CONSUMER. A SELLER SHALL ELECT TO EITHER  
21 DISCLOSE OR SEPARATELY STATE THE CHARGE AND SHALL NOT CHANGE  
22 THE ELECTION WITHOUT THE WRITTEN CONSENT OF THE DEPARTMENT.

23 (II) FOR PURPOSES OF THIS PARAGRAPH (b), A RETAIL  
24 TRANSACTION OCCURS IN COLORADO IF:

25 (A) THE CONSUMER EFFECTS THE RETAIL TRANSACTION IN PERSON  
26 AT A BUSINESS LOCATION IN COLORADO;

27 (B) IF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) DOES

1 NOT APPLY, THE PRODUCT IS DELIVERED TO THE CONSUMER AT A  
2 COLORADO ADDRESS PROVIDED TO THE SELLER;

3 (C) IF SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH  
4 (II) DO NOT APPLY, THE SELLER'S RECORDS, MAINTAINED IN THE ORDINARY  
5 COURSE OF BUSINESS, INDICATE THAT THE CONSUMER'S ADDRESS IS IN  
6 COLORADO AND THE RECORDS ARE NOT MADE OR KEPT IN BAD FAITH;

7 (D) IF SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH  
8 (II) DO NOT APPLY, THE CONSUMER GIVES A COLORADO ADDRESS DURING  
9 THE CONSUMMATION OF THE SALE, INCLUDING THE CONSUMER'S PAYMENT  
10 INSTRUMENT IF NO OTHER ADDRESS IS AVAILABLE, AND THE ADDRESS IS  
11 NOT GIVEN IN BAD FAITH; OR

12 (E) IF SUB-SUBPARAGRAPHS (A) TO (D) OF THIS SUBPARAGRAPH  
13 (II) DO NOT APPLY, THE MOBILE TELEPHONE NUMBER IS ASSOCIATED WITH  
14 A COLORADO LOCATION.

15 (c) THE PREPAID WIRELESS E911 CHARGE IS THE LIABILITY OF THE  
16 CONSUMER AND NOT OF THE SELLER OR OF ANY PROVIDER; EXCEPT THAT  
17 THE SELLER SHALL BE LIABLE TO REMIT ALL PREPAID WIRELESS E911  
18 CHARGES THAT THE SELLER COLLECTS FROM CONSUMERS AS PROVIDED IN  
19 SUBSECTION (3) OF THIS SECTION. THE SELLER SHALL BE DEEMED TO HAVE  
20 COLLECTED THE CHARGE NOTWITHSTANDING THAT THE AMOUNT OF THE  
21 CHARGE HAS NEITHER BEEN SEPARATELY DISCLOSED NOR STATED ON AN  
22 INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT THE SELLER PROVIDES  
23 TO THE CONSUMER.

24 (d) THE AMOUNT OF THE PREPAID WIRELESS E911 CHARGE THAT  
25 IS COLLECTED BY A SELLER FROM A CONSUMER SHALL NOT BE INCLUDED  
26 IN THE BASE FOR MEASURING ANY TAX, FEE, SURCHARGE, OR OTHER  
27 CHARGE THAT IS IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF

1 THIS STATE, OR ANY INTERGOVERNMENTAL AGENCY.

2 (3) (a) THE SELLER SHALL REMIT ANY COLLECTED PREPAID  
3 WIRELESS E911 CHARGES TO THE DEPARTMENT AT THE TIMES AND IN THE  
4 MANNER PROVIDED IN PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S. THE  
5 DEPARTMENT SHALL ESTABLISH, BY RULE, REGISTRATION AND PAYMENT  
6 PROCEDURES THAT SUBSTANTIALLY COINCIDE WITH THE REGISTRATION  
7 AND PAYMENT PROCEDURES THAT APPLY UNDER PART 1 OF ARTICLE 26 OF  
8 TITLE 39, C.R.S. A SELLER IS SUBJECT TO THE PENALTIES UNDER PART 1  
9 OF ARTICLE 26 OF TITLE 39, C.R.S., FOR FAILURE TO COLLECT OR REMIT A  
10 PREPAID WIRELESS E911 CHARGE IN ACCORDANCE WITH THIS SECTION.

11 (b) A SELLER SHALL BE PERMITTED TO DEDUCT AND RETAIN TWO  
12 PERCENT OF THE PREPAID WIRELESS E911 CHARGES THAT ARE COLLECTED  
13 BY THE SELLER FROM CONSUMERS.

14 (c) THE AUDIT AND APPEAL PROCEDURES APPLICABLE TO THE  
15 STATE SALES TAX UNDER PART 1 OF ARTICLE 26 OF TITLE 39, C.R.S., SHALL  
16 APPLY TO PREPAID WIRELESS E911 CHARGES.

17 (d) THE DEPARTMENT SHALL ESTABLISH PROCEDURES BY WHICH  
18 A SELLER MAY DOCUMENT THAT A TRANSACTION IS NOT A RETAIL  
19 TRANSACTION, WHICH PROCEDURES SHALL SUBSTANTIALLY COINCIDE  
20 WITH THE PROCEDURES FOR DOCUMENTING THAT A SALE WAS WHOLESALE  
21 FOR PURPOSES OF THE SALES TAX UNDER PART 1 OF ARTICLE 26 OF TITLE  
22 39, C.R.S.

23 (e) (I) REMITTANCES OF PREPAID WIRELESS E911 CHARGES  
24 RECEIVED BY THE DEPARTMENT ARE COLLECTIONS FOR THE LOCAL  
25 GOVERNING BODY, NOT GENERAL REVENUES OF THE STATE, AND SHALL BE  
26 HELD IN TRUST IN A SEPARATE ACCOUNT FOR DISTRIBUTION TO EACH  
27 GOVERNING BODY. THE DEPARTMENT SHALL PAY ALL REMITTED PREPAID

1 WIRELESS E911 CHARGES OVER TO EACH GOVERNING BODY BY THE  
2 TWENTIETH DAY OF EACH MONTH FOR THE PRECEDING MONTH'S  
3 COLLECTION IN ACCORDANCE WITH SECTION 29-2-102, FOR USE BY SUCH  
4 GOVERNING BODY FOR THE PURPOSES PERMITTED UNDER SECTION  
5 29-11-104, AFTER DEDUCTING AN AMOUNT, NOT TO EXCEED TWO PERCENT  
6 OF THE COLLECTED CHARGES, TO REIMBURSE THE DEPARTMENT FOR ITS  
7 DIRECT COSTS OF ADMINISTERING THE COLLECTION AND REMITTANCE OF  
8 PREPAID WIRELESS E911 CHARGES; EXCEPT THAT THE DEPARTMENT MAY  
9 RETAIN UP TO FOUR HUNDRED FIFTY THOUSAND DOLLARS FROM JANUARY  
10 1, 2011, THROUGH JANUARY 1, 2012, TO COVER THE INITIAL COST OF  
11 ESTABLISHING THE COLLECTION AND REMITTANCE PROCESS.

12 (II) THE PUBLIC UTILITIES COMMISSION SHALL ESTABLISH A  
13 FORMULA FOR DISTRIBUTION OF REVENUES FROM THE PREPAID WIRELESS  
14 E911 CHARGE BASED UPON THE GOVERNING AUTHORITY'S PORTION OF THE  
15 TOTAL 911 CALL VOLUME. THE PUBLIC UTILITIES COMMISSION, OR ITS  
16 DESIGNEE, SHALL COLLECT AND TRANSMIT THE PERCENTAGE OF WIRELESS  
17 CALLS PROCESSED BY EACH PUBLIC SAFETY ANSWERING POINT TO THE  
18 DEPARTMENT BY NOVEMBER 15 OF EACH YEAR. THE PUBLIC UTILITIES  
19 COMMISSION MAY PROMULGATE RULES TO IMPLEMENT THIS  
20 SUBPARAGRAPH (II).

21 (4) THE PREPAID WIRELESS E911 CHARGE IMPOSED BY THIS  
22 SECTION SHALL BE THE ONLY DIRECT E911 FUNDING OBLIGATION IMPOSED  
23 WITH RESPECT TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN  
24 THIS STATE. NO TAX, FEE, SURCHARGE, OR OTHER CHARGE TO FUND E911  
25 SHALL BE IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF THIS  
26 STATE, OR ANY INTERGOVERNMENTAL AGENCY UPON A PROVIDER, SELLER,  
27 OR CONSUMER WITH RESPECT TO THE SALE, PURCHASE, USE, OR PROVISION

1 OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

2           **SECTION 4. Specified effective date - applicability.** This act  
3 shall take effect January 1, 2011, and shall apply to sales made on or after  
4 said date.

5           **SECTION 5. Safety clause.** The general assembly hereby finds,  
6 determines, and declares that this act is necessary for the immediate  
7 preservation of the public peace, health, and safety.