

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0830.01 Jery Payne

SENATE BILL 10-120

SENATE SPONSORSHIP

White, Bacon, Steadman

HOUSE SPONSORSHIP

Rice, Bradford, McCann

Senate Committees

Finance
Appropriations

House Committees

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, AND**
104 **MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

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.

SENATE
Amended 2nd Reading
March 16, 2010

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 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.

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 **- prepaid wireless trust cash fund - definitions.** (1) AS USED IN THIS
22 SECTION:

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

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

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

7 (d) "PROVIDER" MEANS A PERSON THAT PROVIDES PREPAID
8 WIRELESS TELECOMMUNICATIONS SERVICE.

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

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

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

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

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

27 (A) THE CONSUMER EFFECTS THE RETAIL TRANSACTION IN PERSON

1 AT A BUSINESS LOCATION IN COLORADO;

2 (B) IF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) DOES
3 NOT APPLY, THE PRODUCT IS DELIVERED TO THE CONSUMER AT A
4 COLORADO ADDRESS PROVIDED TO THE SELLER;

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

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

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

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

26 (d) THE AMOUNT OF THE PREPAID WIRELESS E911 CHARGE THAT
27 IS COLLECTED BY A SELLER FROM A CONSUMER SHALL NOT BE INCLUDED

1 IN THE BASE FOR MEASURING ANY TAX, FEE, SURCHARGE, OR OTHER
2 CHARGE THAT IS IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF
3 THIS STATE, OR ANY INTERGOVERNMENTAL AGENCY.

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

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

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

19 (d) THE DEPARTMENT SHALL ESTABLISH PROCEDURES BY WHICH
20 A SELLER MAY DOCUMENT THAT A TRANSACTION IS NOT A RETAIL
21 TRANSACTION, WHICH PROCEDURES SHALL SUBSTANTIALLY COINCIDE
22 WITH THE PROCEDURES FOR DOCUMENTING THAT A SALE WAS WHOLESALE
23 FOR PURPOSES OF THE SALES TAX UNDER PART 1 OF ARTICLE 26 OF TITLE
24 39, C.R.S.

25 ==
26 (e) (I) REMITTANCES OF PREPAID WIRELESS E911 CHARGES
27 RECEIVED BY THE DEPARTMENT ARE COLLECTIONS FOR THE LOCAL

1 GOVERNING BODY, NOT GENERAL REVENUES OF THE STATE, AND SHALL BE
2 HELD IN TRUST IN THE PREPAID WIRELESS TRUST CASH FUND, WHICH IS
3 HEREBY CREATED. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
4 PARAGRAPH (e), THE DEPARTMENT SHALL TRANSMIT THE MONEYS IN THE
5 FUND TO EACH GOVERNING BODY WITHIN SIXTY DAYS AFTER THE
6 DEPARTMENT RECEIVES THE MONEY IN ACCORDANCE WITH SECTION
7 29-2-106 FOR USE BY SUCH GOVERNING BODY FOR THE PURPOSES
8 PERMITTED UNDER SECTION 29-11-104.

9 (II) THE DEPARTMENT MAY EXPEND AN AMOUNT, NOT TO EXCEED
10 THREE PERCENT OF THE COLLECTED CHARGES IN THE PREPAID WIRELESS
11 TRUST CASH FUND, NECESSARY TO REIMBURSE THE DEPARTMENT FOR ITS
12 DIRECT COSTS OF ADMINISTERING THE COLLECTION AND REMITTANCE OF
13 PREPAID WIRELESS E911 CHARGES; EXCEPT THAT THE DEPARTMENT MAY
14 EXPEND UP TO AN ADDITIONAL FOUR HUNDRED FIFTY THOUSAND DOLLARS
15 FROM JANUARY 1, 2011, THROUGH JANUARY 1, 2012, TO COVER THE
16 INITIAL COST OF ESTABLISHING THE COLLECTION AND REMITTANCE
17 PROCESS.

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

27 (4) THE PREPAID WIRELESS E911 CHARGE IMPOSED BY THIS

1 SECTION SHALL BE THE ONLY DIRECT E911 FUNDING OBLIGATION IMPOSED
2 WITH RESPECT TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN
3 THIS STATE. NO TAX, FEE, SURCHARGE, OR OTHER CHARGE TO FUND E911
4 SHALL BE IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF THIS
5 STATE, OR ANY INTERGOVERNMENTAL AGENCY UPON A PROVIDER, SELLER,
6 OR CONSUMER WITH RESPECT TO THE SALE, PURCHASE, USE, OR PROVISION
7 OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

8 **SECTION 4. Appropriation.** In addition to any other
9 appropriation, there is hereby appropriated, out of any moneys in the
10 prepaid wireless trust cash fund created in section 29-11-102.5 (3) (e) (I),
11 Colorado Revised Statutes, not otherwise appropriated, to the department
12 of revenue, for administrative costs associated with collecting prepaid
13 wireless telephone 911 surcharges, for the fiscal year beginning July 1,
14 2010, the sum of four hundred seventy-six thousand one hundred
15 ninety-five dollars (\$476,195) cash funds and 1.4 FTE, or so much
16 thereof as may be necessary, for the implementation of this act.

17 **SECTION 5. Specified effective date - applicability.** This act
18 shall take effect January 1, 2011, and shall apply to sales made on or after
19 said date.

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