

1 **Model Legislation**

2 As approved by the NCSL Executive Committee Task Force
3 on State & Local Taxation of Communications and Electronic Commerce
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7 An act imposing a uniform, statewide E911 charge¹ on the retail sale of prepaid wireless
8 telecommunication services to consumers, precluding the application of other state and local
9 E911 charges to such services, and making conforming changes.
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12 SECTION 1. SHORT TITLE.

13 This Act may be cited as the Prepaid Wireless E911 Charge Act of 20____.

14 SECTION 2. FINDINGS. The Legislature finds that –

- 15 A. Maintaining effective and efficient 911 systems across the state benefits all citizens;
- 16 B. 911 fees imposed upon the consumers of telecommunication services that have the ability
17 to dial 911 are an important funding mechanism to assist state and local governments with the
18 deployment of enhanced 911 services to the citizens of this state;
- 19 C. Prepaid wireless telecommunication services are an important segment of the
20 telecommunications industry and have proven particularly attractive to low-income, low-volume
21 consumers;
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¹ Depending on state law, “fee” or “tax” may be a more appropriate label than “charge.”

1 D. Unlike traditional telecommunication services, prepaid wireless telecommunications
2 services are not sold or used pursuant to term contracts or subscriptions, and monthly bills are
3 not sent to consumers by prepaid wireless telecommunication service providers or retail vendors;

4 E. Prepaid wireless consumers have the same access to emergency 911 services from their
5 wireless devices as wireless consumers on term contracts, and prepaid wireless consumers
6 benefit from the ability to access the 911 system by dialing 911;

7 F. Consumers purchase prepaid wireless telecommunication services at a wide variety of
8 general retail locations and other distribution channels, not just through service providers;

9 G. Such purchases are made on a “cash-and-carry” or “pay-as-you-go” basis from retailers;
10 and

11 H. To ensure equitable contributions to the funding of 911 systems from consumers of
12 prepaid wireless telecommunication services, the collection and payment obligation of charges to
13 support E911 should be imposed upon the consumer’s retail purchase of the prepaid wireless
14 telecommunication service and should be in the form of a single, statewide charge that is
15 collected once at the time of purchase directly from the consumer, remitted to the state, and
16 distributed to E911 authorities pursuant to state law.

17 SECTION 3. DEFINITIONS. For purposes of this Act, the following terms shall have the
18 following meanings:

19 “Consumer” means a person who purchases prepaid wireless telecommunications service in a
20 retail transaction.

1 “Department” means the [Department of Revenue].²

2 “Prepaid wireless E911 charge” means the charge that is required to be collected by a seller from
3 a consumer in the amount established under Section 4 of this Act.

4 “Prepaid wireless telecommunications service” means a wireless telecommunications service
5 that allows a caller to dial 911 to access the 911 system, which service must be paid for in
6 advance and is sold in predetermined units or dollars of which the number declines with use in a
7 known amount.³

8 “Provider” means a person that provides prepaid wireless telecommunications service pursuant
9 to a license issued by the Federal Communications Commission.

10 “Retail transaction” means the purchase of prepaid wireless telecommunications service from a
11 seller for any purpose other than resale.

² The proper agency will vary from state to state, but should be the agency that administers whatever tax (e.g., sales tax) provides the registration, resale-exemption, audit, and appeal procedures that are incorporated by reference in this Act.

³ Alternatively, define by cross reference to sales tax statute. For example, if state has adopted SSUTA, substitute the following:

“Prepaid wireless telecommunications service” means prepaid wireless calling service as defined in [SECTION IMPLEMENTING SSUTA DEFINITION].

1 “Seller” means a person who sells prepaid wireless telecommunications service to another
2 person.

3 “Wireless telecommunications service” means commercial mobile radio service as defined by
4 section 20.3 of title 47 of the Code of Federal Regulations, as amended.⁴

5 SECTION 4. COLLECTION AND REMITTANCE OF E911 CHARGE.

6 A. AMOUNT OF CHARGE. The prepaid wireless E911 charge shall be [____per retail
7 transaction] [____% of the sales price per retail transaction]⁵ or, on and after the effective date
8 of an adjusted amount per retail transaction that is established under paragraph F of this Section
9 4, such adjusted amount.

10 B. COLLECTION OF CHARGE. The prepaid wireless E911 charge shall be collected by
11 the seller from the consumer with respect to each retail transaction occurring in this state. The
12 amount of the prepaid wireless E911 charge shall be either separately stated on an invoice,

⁴ Alternatively, define by cross reference to sales tax statute. For example, if state has adopted
SSUTA, substitute the following:

“Wireless telecommunications service” means mobile wireless service as defined
in [SECTION IMPLEMENTING SSUTA DEFINITION].

⁵ States may choose to impose either a flat fee per retail transaction or a percentage of each
transaction. The fee should be set at an amount that is not more than one-half of the state’s
monthly postpaid E911 charge.

1 receipt, or other similar document that is provided to the consumer by the seller, or otherwise
2 disclosed to the consumer.

3 C. APPLICATION OF CHARGE. For purposes of paragraph B of this Section 4, a retail
4 transaction that is effected in person by a consumer at a business location of the seller shall be
5 treated as occurring in this state if that business location is in this state, and any other retail
6 transaction shall be treated as occurring in this state if the retail transaction is treated as occurring
7 in this state for purposes of [STATE LAW REFERENCE].⁶

8 D. LIABILITY FOR CHARGE. The prepaid wireless E911 charge is the liability of the
9 consumer and not of the seller or of any provider, except that the seller shall be liable to remit all
10 prepaid wireless E911 charges that the seller collects from consumers as provided in Section 5 of
11 this Act, including all such charges that the seller is deemed to collect where the amount of the
12 charge has not been separately stated on an invoice, receipt, or other similar document provided
13 to the consumer by the seller.

14 E. EXCLUSION OF E911 CHARGE FROM BASE OF OTHER TAXES AND FEES. The
15 amount of the prepaid wireless E911 charge that is collected by a seller from a consumer, if such
16 amount is separately stated on an invoice, receipt, or other similar document provided to the
17 consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or
18 other charge that is imposed by this state, any political subdivision of this state, or any
19 intergovernmental agency.

⁶ Cross reference to the state transaction tax that provides sourcing rules to be piggybacked here.

1 F. RE-SETTING OF CHARGE. The prepaid wireless E911 charge shall be proportionately
2 increased or reduced, as applicable, upon any change to [the state E911 charge on postpaid
3 wireless telecommunications service under [STATE LAW REFERENCE]].⁷ Such increase or
4 reduction shall be effective on the effective date of the change to the postpaid charge or, if later,
5 the first day of the first calendar month to occur at least 60 days after the [enactment]⁸ of the
6 change to the postpaid charge. The Department shall provide not less than 30 days of advance
7 notice of such increase or reduction on the Department’s website.

8 G. BUNDLED TRANSACTIONS.⁹ When prepaid wireless telecommunications service is
9 sold with one or more other products or services for a single, non-itemized price, then the
10 percentage specified in Section 4 (A) shall apply to the entire non-itemized price unless the seller
11 elects to apply such percentage to:

- 12 1. if the amount of the prepaid wireless telecommunications service is disclosed to the
- 13 consumer as a dollar amount, such dollar amount; or

⁷ Will need to be adjusted depending on whether a state-level postpaid E911 charge applies.

⁸ The term “implementation” may be substituted if the postpaid charge can change without enactment of a new law or an amendment to existing law.

⁹ Subsection G is only required if a state elects to impose a percentage-based 911 fee in subsection A of Section 4.

1 2. if the seller can identify the portion of the price that is attributable to the prepaid
2 wireless telecommunications service by reasonable and verifiable standards from its books and
3 records that are kept in the regular course of business for other purposes including, but not
4 limited to, non-tax purposes, such portion.

5 However, if a minimal amount of prepaid wireless telecommunications service is sold with a
6 prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the
7 percentage specified in subparagraph a. to such transaction. For purposes of this paragraph, an
8 amount of service denominated as ten (10) minutes or less, or five dollars (\$5) or less, is
9 minimal.

10 SECTION 5. ADMINISTRATION OF E911 CHARGE.

11 A. TIME AND MANNER OF PAYMENT. Prepaid wireless E911 charges collected by
12 sellers shall be remitted to the Department at the times and in the manner provided by [SALES
13 TAX LAW]¹⁰ with respect to [SALES TAX]. The Department shall establish registration and
14 payment procedures that substantially coincide with the registration and payment procedures that
15 apply to [SALES TAX].

16 B. SELLER ADMINISTRATIVE DEDUCTION. A seller shall be permitted to deduct and
17 retain three percent (3%) of prepaid wireless E911 charges that are collected by the seller from
18 consumers.

¹⁰ Reference should be to a transfer tax of general application (e.g., sales tax or excise tax) and not to a communications-specific tax.

1 C. AUDIT AND APPEAL PROCEDURES. The audit and appeal procedures applicable to
2 [SALES TAX] under the [SALES TAX LAW] shall apply to prepaid wireless E911 charges.

3 D. EXEMPTION DOCUMENTATION. The Department shall establish procedures by
4 which a seller of prepaid wireless telecommunications service may document that a sale is not a
5 retail transaction, which procedures shall substantially coincide with the procedures for
6 documenting sale for resale transactions for [SALES TAX] purposes under the [SALES TAX
7 LAW].

8 E. DISPOSITION OF REMITTED CHARGES. The Department shall pay all remitted
9 prepaid wireless E911 charges over to [911 AGENCY]¹¹ within [30] days of receipt, for use by
10 [911 AGENCY] in accordance with the purposes permitted by [911 AGENCY LAW], after
11 deducting an amount, not to exceed two percent (2%) of collected charges, that shall be retained
12 by the Department to reimburse its direct costs of administering the collection and remittance of
13 prepaid wireless E911 charges.

14 SECTION 6. NO LIABILITY.

15 A. NO LIABILITY REGARDING 911 SERVICE. No provider or seller of prepaid wireless
16 telecommunications service shall be liable for damages to any person resulting from or incurred
17 in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying,
18 or failing to identify, the telephone number, address, location, or name associated with any
19 person or device that is accessing or attempting to access 911 or E911 service.

¹¹ Intention is to piggyback on existing state-level E911 framework, if any.

1 B. NO LIABILITY REGARDING COOPERATION WITH LAW ENFORCEMENT. No
2 provider or seller of prepaid wireless telecommunications service shall be liable for damages to
3 any person resulting from or incurred in connection with the provision of any lawful assistance
4 to any investigative or law enforcement officer of the United States, this or any other state, or
5 any political subdivision of this or any other state, in connection with any lawful investigation or
6 other law enforcement activity by such law enforcement officer.

7 C. INCORPORATION OF POSTPAID 911 LIABILITY PROTECTION. In addition to the
8 protection from liability provided by paragraphs A and B of this Section 6, each provider and
9 seller shall be entitled to the further protection from liability, if any, that is provided to providers
10 and sellers of wireless telecommunications service that is not prepaid wireless
11 telecommunications service pursuant to [CITE APPLICABLE STATE LAW EXCULPATORY
12 PROVISIONS APPLICABLE TO POSTPAID WIRELESS SERVICE].

13 SECTION 7. EXCLUSIVITY OF PREPAID WIRELESS E911 CHARGE.

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

20 SECTION 8. EFFECTIVE DATE.

21 This Act shall be effective with respect to retail transactions occurring on and after [_____].