

Amendment Proposal for : ENGROSSED HOUSE BILL NO. 1096 (FIRST ENGROSSMENT)

57-40.6-04. Fee collection procedure.

An assessed communications service provider may retain the actual costs of administration in collection of the fee and any telephone exchange access service provider charges for 911 database management, not to exceed ~~five two and one-half~~ one percent of the fee collected. The fee proceeds must be paid by the assessed communications service provider within thirty days after it is collected from the subscriber or customer unless the provider has fewer than ten subscribers or customers in a jurisdiction, in which case the provider may pay the proceeds quarterly

57-40.6-14. Prepaid wireless emergency 911 fee.

1. There is imposed a prepaid wireless emergency 911 fee of two and one-half percent on the gross receipts of sellers from all sales at retail of prepaid wireless services in this state.
 - a. A retail transaction that is made, in person, by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state under the provisions of chapter 57-39.4 as those provisions apply to a prepaid wireless calling service.
 - b. Prepaid wireless emergency 911 fees collected by sellers shall be remitted to the commissioner.
 - c. An entity required to collect and remit the prepaid wireless emergency 911 fee shall register with the commissioner. The registration shall be made in the form prescribed by the commissioner, in which the registrant shall identify the name under which the registrant transacts or intends to transact business, the location of the business, the federal identification number, and other information as the commissioner may require.
 - d. Gross receipts from sales at retail of prepaid wireless services are exempt from the prepaid wireless emergency 911 fee imposed by this section when the sale is made to a person entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04.
2. The prepaid wireless emergency 911 fee shall be collected by the seller from the consumer. The amount of the prepaid wireless emergency 911 fee shall be either

separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

3. The prepaid wireless emergency 911 fee is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless emergency 911 fees the seller collects from the consumer, including all fees the seller is deemed to collect when the amount of the fee has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.
4. If the amount of the prepaid wireless emergency 911 fee imposed by this section is separately stated on an invoice, receipt, or other similar document provided to the consumer, the prepaid wireless emergency 911 fee may not be included in the base for measuring any other tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.
5. When prepaid wireless service is sold with one or more other products or services for a single, nonitemized price, then the percentage specified in subsection 1 shall apply to the entire nonitemized price unless the seller elects to apply the percentage to:
 - a. The amount of the prepaid wireless service that is disclosed to the consumer as a dollar amount, including the fee imposed by this section; or
 - b. The seller identifies the portion of the price that is attributable to the prepaid wireless service by reasonable and verifiable standards from its books and records that are kept in the regular course of business.
6. If a minimal amount of prepaid wireless service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the percentage specified in subsection 1. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars or less, is minimal. Page No. 9
7. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for audit, refunds, credits, or rules, not inconsistent with the provisions of this chapter, govern the administration of the prepaid wireless emergency 911 fee imposed in this chapter.
8. a. A seller must complete a prepaid emergency 911 fee return reporting the gross receipts of the seller for prepaid wireless services sold, the amount of the prepaid wireless emergency 911 fee for the period covered by the return, and any other information the commissioner may require to enable the seller to correctly compute and collect the prepaid wireless emergency 911 fee.

- b. If the seller is a retailer under chapter 57-39.2, the seller may file the prepaid emergency 911 fee return and pay the fees due at the same time the sales and use tax is due under section 57-39.2-11 or 57-39.2-12.
- c. The seller required to collect, report, and remit the prepaid wireless emergency 911 fee imposed under this section may retain ~~three~~ one percent of the fee.