

SENATE BILL NO. 2067

Introduced by

Senator Krebsbach

1 A BILL for an Act to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03,
2 57-40.6-03.1, 57-40.6-04, 57-40.6-05, 57-40.6-06, and 57-40.6-08 of the North Dakota Century
3 Code, relating to an excise tax on telephone exchange access service and application of that
4 tax to wireless service for support of wireless enhanced 911 service; and to provide an effective
5 date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-40.6-01. Definitions.** In this chapter, unless the context or subject matter otherwise
10 requires:

- 11 1. "Emergency services communication system" means a statewide, countywide, or
12 citywide radio system, land lines communication network, wireless service network,
13 or ~~emergency enhanced~~ 911 (E911) telephone system, which provides rapid public
14 access for coordinated dispatching of services, personnel, equipment, and facilities
15 for law enforcement, fire, medical, or other emergency services.
- 16 2. "FCC order" means federal communications commission order 94-102 (961
17 Federal Register 40348) and any other FCC order that affects the provision of
18 wireless enhanced 911 service.
- 19 3. "Public safety answering point" or "PSAP" means a communications facility
20 operated on a twenty-four hour basis which first receives 911 calls from persons in
21 a 911 service area and which, as appropriate, may directly dispatch public safety
22 services or extend, transfer, or relay 911 calls to appropriate public safety
23 agencies.

- 1 4. "Subscriber service address" means, for purposes of wire line subscribers, the
2 address where the telephone subscriber's wire line telephone device is used and,
3 for purposes of wireless subscribers, the place of primary use, as that term is
4 defined in the Mobile Telecommunications Sourcing Act (Pub.L. 106-252; 4 U.S.C.
5 124(8)).
- 6 5. "Telephone access line" means the principal access to the telephone company's
7 switched network including an outward dialed trunk or access register.
- 8 6. "Telephone exchange access service" means service to any wire line telephone
9 access line identified by a unique telephone number that provides local wire line
10 access to the telecommunications network to a service subscriber and which
11 enables the subscriber to access the emergency services communications system
12 by dialing the digits 9-1-1 on the subscriber's telephone device.
- 13 7. "Wireless access line" means each active wireless telephone number assigned to
14 a commercial mobile radio service subscriber, including end users of resellers.
- 15 8. "Wireless enhanced 911 service" means the service required to be provided by
16 wireless service providers pursuant to the FCC order.
- 17 9. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C.
18 332(d)(1) and includes:
 - 19 a. Services commonly referred to as wireless; and
 - 20 b. Services provided by any wireless real time two-way voice communication
21 device, including radio-telephone communications used in:
 - 22 (1) Cellular telephone service;
 - 23 (2) Personal communications service; or
 - 24 (3) The functional or competitive equivalent of a radio-telephone
25 communications line used in cellular telephone service, personal
26 communications service, or a network radio access line.
- 27 10. "Wireless service provider" means any entity authorized by the federal
28 communications commission to provide wireless service within the state of North
29 Dakota.

30 **SECTION 2. AMENDMENT.** Section 57-40.6-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose excise tax on telephone

exchange access lines service and on wireless service - Procedure. The governing body of a county or city may impose an excise tax on the use of telephone exchange access lines service and on the use of wireless service in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line and per wireless access line.
2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The question of the adoption of the excise tax may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the excise tax. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax for an initial six-year period.
3. Any political subdivision that desires to increase the tax, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the tax. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six additional years without resubmitting the question to the electors.
4. In any geographic area, only one political subdivision may impose the excise tax and imposition must be based on the subscriber service address.

- 1 5. In the interest of public safety, where the ~~customers-exchange~~ subscriber's
2 telephone exchange access service boundary and the boundary of the political
3 subdivision imposing the tax do not coincide, and where all of the political
4 subdivisions within the ~~exchange~~ subscriber's telephone exchange access service
5 boundary have not complied with subsection 1, and where a majority of the E911
6 subscribers within the ~~exchange~~ subscriber's telephone exchange access service
7 boundary have voted for the tax, ~~an-exchange-customer-residing a telephone~~
8 exchange access service subscriber whose subscriber service address is outside
9 the political subdivision may receive E911 services by signing a contract
10 agreement with the political subdivision providing the emergency
11 ~~telecommunications-system~~ services communications system. The telephone
12 ~~company~~ exchange access service provider may collect an additional tax, equal in
13 amount to the basic tax on those subscribers within the exchange boundary. The
14 additional tax amounts collected must be remitted as provided in this chapter.
- 15 6. Effective August 1, 2001, any excise tax imposed under this section, including a
16 tax imposed before August 1, 2001, applies to all telephone exchange access
17 service and to all wireless service at each subscriber service address within the
18 area in which the tax is imposed.

19 **SECTION 3. AMENDMENT.** Section 57-40.6-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-40.6-03. Payment of tax by telephone ~~company~~ exchange access service and**
22 **wireless service subscriber.** The resolution imposing a tax under section 57-40.6-02 must
23 include a requirement that the telephone ~~company~~ exchange access service provider and the
24 wireless service provider collect the tax from the subscriber. In its billing statement or invoice to
25 the subscriber, the telephone ~~company~~ exchange access service provider and the wireless
26 service provider shall state the amount of the tax separately.

27 **SECTION 4. AMENDMENT.** Section 57-40.6-03.1 of the North Dakota Century Code
28 is amended and reenacted as follows:

29 **57-40.6-03.1. Enhanced 911 data base management charges.** Any telephone
30 ~~company~~ exchange access service provider charges for enhanced 911 data base management
31 must be on a per telephone exchange access line service basis.

1 **SECTION 5. AMENDMENT.** Section 57-40.6-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-40.6-04. Tax collection procedure.** A resolution adopted under section 57-40.6-02
4 must include adequate procedures for the administration and collection of the tax, including a
5 provision for reimbursement to the telephone ~~company~~ exchange access service provider and
6 the wireless service provider for the actual costs of administration in collection of the tax, not to
7 exceed five percent of the tax collected. The resolution must also include a provision that the
8 tax be paid by the telephone ~~company~~ exchange access service provider and the wireless
9 service provider within thirty days after it is collected from the subscriber.

10 **SECTION 6. AMENDMENT.** Section 57-40.6-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-40.6-05. Restriction on use of tax proceeds.** The ~~county~~ governing body may not
13 use the proceeds of the tax imposed under section 57-40.6-02 for any purpose other than
14 ~~establishing or operating the emergency services communication system~~ as provided in this
15 section.

- 16 1. Revenues from the excise tax on wireless service authorized by section
17 57-40.6-02, with the exception of those retained for costs of administration in
18 collection of the tax under section 57-40.6-04, must be used for implementation,
19 maintenance, and operation of enhanced 911 wireless service under this section,
20 except as provided in subsection 6.
- 21 2. The governing body shall hold the portion of the revenues from the excise tax on
22 wireless service unexpended in a separate fund until such time as the governing
23 body makes a request for wireless enhanced 911 service or adopts a statement
24 certifying that it is capable of receiving and utilizing wireless enhanced 911 service,
25 whichever is earlier, provided that those revenues may not be expended until the
26 agreements required under subsection 3 have been executed.
- 27 3. The governing body or its designee shall enter into agreements directly with
28 wireless service providers for their services necessary to implement, maintain, and
29 operate wireless enhanced 911 service as provided by law and reimburse the
30 wireless service providers, solely with the portion of the revenues from the excise

1 tax on wireless service, on a monthly basis for the costs established by the
2 agreements.

3 4. The governing body or its designee shall enter into agreements directly with
4 telephone access service providers for their services necessary to implement,
5 maintain, and operate the emergency services communication system as provided
6 by law and reimburse the telephone access service providers, solely with the
7 portion of the revenues from the excise tax on telephone exchange access service,
8 on a monthly basis for the costs established by the agreements.

9 5. If the total amount of funds requested in a particular month pursuant to the
10 agreements exceeds the total revenues held from the collection of the separate
11 portions of excise tax, invoices for reimbursement for that month must be
12 reimbursed according to the pro rata share of the amounts submitted and the
13 balance of any unreimbursed invoices must be carried over to the following month
14 or months and paid, from the separate portions of the excise tax pursuant to this
15 section, first before any other invoices are paid in any such subsequent month or
16 months.

17 6. Revenues in excess of the obligations incurred under the agreements specified by
18 this section, as determined on a monthly basis, may only be used for
19 implementing, maintaining, or operating the emergency services communication
20 system.

21 **SECTION 7. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **57-40.6-06. Data base.** ~~In 911 systems that have been approved by the state~~
24 ~~emergency services communication system advisory committee, any telecommunications~~
25 ~~company~~ Any telephone exchange access service provider providing emergency 911 service
26 shall provide, on an annual basis, current customer names, addresses, and telephone numbers
27 to each public service answering point within each 911 system and shall update the information
28 ~~according to a schedule prescribed by the state 911 advisory committee's standards and~~
29 ~~guidelines.~~ Information provided under this section must be provided in accordance with the
30 transactional record disclosure requirements of the federal Electronics Communications Privacy
31 Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iii).

SECTION 8. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless service provider that provides access to an emergency system ~~at or below cost~~, or any officer, agent, or employee of any public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless services provider, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.
3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

SECTION 9. EFFECTIVE DATE. This Act becomes effective on August 1, 2001.