

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2169
(Senators Wardner, Taylor)
(Representatives Carlson, Delmore)

AN ACT to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-04, 57-40.6-05, 57-40.6-06, 57-40.6-08, 57-40.6-10, and 57-40.6-12 of the North Dakota Century Code, relating to the application, collection, and use of emergency services communication fees; to repeal section 57-40.6-11 of the North Dakota Century Code, relating to a report on all standards and guidelines; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, active prepaid wireless service, and voice over internet protocol service.
3. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
- ~~2-~~ 4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
- ~~3-~~ 6. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
7. "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments.

- 4- 8. "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
- 5- 9. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in ~~the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 4 U.S.C. 124(8)]~~ section 57-34.1-02.
- 6- 10. "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- 7- 11. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- 8- 12. "Unpublished" means information that is not published or available from directory assistance.
13. "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- 9- 14. "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- 40- 15. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- 44- 16. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:
- a. Services commonly referred to as wireless; and
 - b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.
- 42- 17. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

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

57-40.6-02. Authority of counties or cities to impose fee on ~~telephone exchange access service and on wireless~~ assessed communications service - Procedure. The governing body of a

county or city may impose a fee on ~~the use of telephone exchange access service and on the use of wireless service~~ all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per ~~telephone access line and per wireless access line~~ communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee 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 fee. The fee 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 fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.
4. Any political subdivision that desires to increase the fee, 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 fee. 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 fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.
5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, 2001, ~~may be 2007, on telephone exchange access service is extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing~~

~~body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the governing body of the city or county at a regular or special city or county election assessed communications services.~~

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

57-40.6-03. Payment of fee by telephone exchange access service and wireless assessed communications service subscriber or customer. ~~The resolution imposing a fee under section 57-40.6-02 must include a requirement that the telephone exchange access service provider and the wireless assessed communications service provider shall collect the fee from the subscriber or customer of the service. In its~~

1. ~~For prepaid wireless service, the provider shall remit the monthly fee authorized by section 57-40.6-02 based either upon each active prepaid wireless telephone associated with this state for each active prepaid wireless telephone customer that has a sufficient positive balance as of the last day of each month or upon a two percent assessment on the gross revenue received from the sale of prepaid wireless services each month. The provider shall remit the fee in a manner consistent with the provider's existing operating or technological abilities, including by customer address, location associated with the wireless telephone number, or reasonable allocation method based upon other relevant data. The fee amount or an equivalent number of minutes may be reduced from the prepaid customer's account. However, collection of the fee in the manner of a reduction of value or minutes from the prepaid customer's account does not constitute a reduction in the sales price for purposes of taxes that are collected at the point of sale.~~
2. ~~For assessed communications service that involves a monthly billing, in the billing statement or invoice to the subscriber, the telephone exchange access service provider and the wireless service provider shall state the amount of the fee separately.~~

SECTION 4. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. Fee collection procedure. ~~A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the fee, including a provision for reimbursement to the telephone exchange access service provider and the wireless service provider for the actual costs of administration in collection of the fee. An assessed communications service provider may retain the actual costs of administration in collection of the fee, not to exceed five percent of the fee collected. The resolution must also include a provision that the fee proceeds must be paid by the telephone exchange access service provider and the wireless 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.~~

SECTION 5. AMENDMENT. Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-05. Restriction on use of fee proceeds. ~~The governing body may not use the proceeds of the fee imposed under section 57-40.6-02 solely for any purpose other than as provided in this section.~~

1. ~~Within twenty four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911 service from all wireless carriers providing service as of that date within the governing body's jurisdiction.~~

2. ~~The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.~~
3. ~~The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.~~
4. ~~Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system and may enter into agreements to effectuate the same.~~
5. The governing body or its designee shall deposit the fee proceeds in a separate fund and keep records to show all expenditures for wireless service providers separately from expenditures for telephone exchange access service providers from the fee proceeds.

SECTION 6. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. Any telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each 911 coordinator, the coordinator's designee, or public safety answering point within each 911 system. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished. The provider shall report data base information regarding new service or a change of service within two business days of the actual service change unless a longer period is permitted by the jurisdiction. The provider shall report data base information regarding dropped service at least monthly.

SECTION 7. 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, automated notification system, or emergency instructions - Liability.

1. A public agency, public safety agency, ~~telephone exchange access service provider, wireless service~~ assessed communications service provider, or person that provides access to an emergency services communication system or an automated notification system, or any officer, agent, or employee of any public agency, public safety agency, ~~telephone exchange access service provider, wireless~~ assessed communications service provider, or person 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 8. AMENDMENT. Section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-10. Standards and guidelines.

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall:
 - a. Designate a 911 coordinator.
 - b. Enter written agreements with participating organizations and agencies.
 - c. Designate lines of authority.
 - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
 - e. Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.
 - f. Define a records retention plan for all printed and recorded records in accordance with jurisdictional requirements.
 - g. Encourage that coin-free dialing is available for 911 calls.
 - h. Define a mechanism to differentiate between emergency 911 telephone calls from other calls.
 - i. Provide for written operating procedures.
 - j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three-way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.
 - k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.
 - l. Ensure that fee proceeds collected under this chapter are expended in accordance with guidelines developed pursuant to section 57-40.6-12 and implement an accounting system sufficient to meet the requirements of section 57-40.6-05.
2. The governing committee may:

- a. Require appropriate liability protection.
 - b. Create a user advisory board.
 - c. Conduct an annual statistical evaluation of services.
 - d. Publish an annual financial report in the official county newspaper.
3. An emergency 911 telephone system must access and dispatch the following services:
 - a. Law enforcement.
 - b. Fire service.
 - c. Emergency medical service.
4. An emergency 911 telephone system may access and dispatch the following services:
 - a. Poison control.
 - b. Suicide prevention.
 - c. Emergency management.
 - d. Any other related service in subsection 3 or 4.
5. The governing committee of an emergency 911 telephone system shall provide that that system:
 - a. Provides twenty-four-hour, seven-day-a-week coverage.
 - b. Dispatches and communicates with service identified in subsection 3.
 - c. Records all incoming 911 calls and related radio and telephone communications.
 - d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.
 - e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.
 - f. Does not accept one-way call-in alarms or devices.
 - g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.
6. An emergency 911 telephone system may:
 - a. Locate the emergency caller utilizing electronic equipment.
 - b. Provide a mechanism for investigating false or prank calls.
7. An emergency 911 telephone system must include at least one public safety answering point.
8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must

be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.

SECTION 9. AMENDMENT. Section 57-40.6-12 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-12. ~~Reports of coordination of public safety answering points coverage~~ Emergency services communications coordinating committee - Membership - Duties.

1. The governing body of a city or county, which adopted a fee on ~~telephone exchange access service and wireless service~~ assessed communications services under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the ~~division of state radio and to the public safety answering points~~ emergency services communications coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the adjutant general to represent the division of state radio.
2. The ~~public safety answering points coordinating~~ committee shall:
 - a. Recommend to the legislative council changes to the operating standards for emergency services communications, including training or certification standards for dispatchers;
 - b. Develop guidelines regarding the allowable uses of the fee revenue collected under this chapter;
 - c. Request, receive, and compile reports from each governing body on the use of the proceeds of the fee imposed under this chapter, analyze the reports with respect to the guidelines, file its report with the legislative council by November first of each even-numbered year regarding the use of the fee revenue, and recommend to the legislative assembly the appropriate maximum fee allowed by section 57-40.6-02; and
 - d. Periodically evaluate chapter 57-40.6 and recommend changes to the legislative council.
3. The committee may initiate and administer statewide agreements among the governing bodies of the local governmental units with jurisdiction over an emergency 911 telephone system to coordinate the procurement of equipment and services, fund the research, administration, and activities of the committee, and contract for the necessary staff support for committee activities.

SECTION 10. REPEAL. Section 57-40.6-11 of the North Dakota Century Code is repealed.

SECTION 11. LEGISLATIVE COUNCIL STUDY - E911 FEES PAID ON PREPAID WIRELESS. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of collecting emergency 911 fees on the sale of prepaid wireless services. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless services on an equitable, efficient, competitively neutral, and nondiscriminatory basis and a review of whether the collection of fees on prepaid wireless services would constitute an efficient use of public funds, given the technological and practical considerations of collecting the fees. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.