An Act

ENROLLED HOUSE
BILL NO. 1595

By: Martin (Steve) of the House

and

Barrington of the Senate

An Act relating to emergency telephone service; amending Section 3, Chapter 191, O.S.L. 2010 (63 O.S. Supp. 2010, Section 2843.2), which relates to the emergency pre-paid wireless telephone fee; updating statutory citations; modifying entities eligible to receive revenue from the fee; stating duty of substate planning districts to hold revenue from the fee; and changing how distribution of the revenue from the fee is calculated.

SUBJECT: Emergency telephone service

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 191, O.S.L. 2010 (63 O.S. Supp. 2010, Section 2843.2), is amended to read as follows:

Section 2843.2 A. As used in this section, unless the context otherwise requires:

1. "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

2. "Prepaid wireless nine-one-one fee" means the fee that is required to be collected by a seller from a consumer in the amount established in this section;

3. "Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

4. "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than for resale; and

5. "Seller" means a person who sells prepaid wireless telecommunications service to another person.

B. There is hereby imposed a prepaid wireless nine-one-one fee of fifty cents ($0.50) per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection G of this section, the adjusted amount.

C. The prepaid wireless nine-one-one fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless nine-one-one fee shall either be separately stated on an invoice, receipt or similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

D. For purposes of subsection C of this section, a retail transaction that is effected 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 sourced as follows:

1. When the retail transaction does not occur at a business location of the seller, the retail transaction is sourced to the location where receipt by the consumer, or the consumer's donee, designated as such by the consumer, occurs, including the location indicated by instructions for delivery to the consumer or donee, known to the seller;

2. When the provisions of paragraph 1 of this subsection do not apply, the sale is sourced to the location indicated by an address for the consumer that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

3. When the provisions of paragraphs 1 and 2 of this subsection do not apply, the sale is sourced to the location indicated by an address for the consumer obtained during the consummation of the

sale, including the address of a consumer's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

4. When none of the previous rules of paragraphs 1, 2, and 3 of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. If the seller knows the mobile telephone number, the location will be that which is associated with the mobile telephone number.

E. The prepaid wireless nine-one-one fee is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless nine-one-one fees that the seller collects from the consumer as provided for in this section, including all charges that the seller is deemed to collect where the amount of the fee has not been separately stated on an invoice, receipt, or other similar document provided by the consumer to the seller.

F. If the amount of the prepaid wireless nine-one-one fee is separately stated on the invoice, the prepaid wireless nine-one-one fee shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of this state, or any intergovernmental agency.

G. The prepaid wireless nine-one-one fee shall be proportionately increased or reduced, as applicable, upon any change to the amount of the nine-one-one emergency wireless telephone fee as provided in subsection A of Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title. The increase or reduction shall be effective on the effective date of the change to the nine-one-one emergency wireless telephone fee as provided in subsection A of Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title or, if later, the first day of the first calendar month to occur at least sixty (60) days after the enactment of the change. The Oklahoma Tax Commission shall provide not less than thirty (30) days' advance notice of an increase or reduction on its public website.

H. Prepaid wireless nine-one-one fees collected by sellers shall be remitted to the Oklahoma Tax Commission at the times and in

a manner provided for under the Oklahoma Sales Tax Code with respect to the sales tax imposed on prepaid wireless telecommunications services. The Oklahoma Tax Commission shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply under the Oklahoma Sales Tax Code.

I. A seller shall be permitted to deduct and retain three percent (3%) of the prepaid wireless nine-one-one fees collected from consumers.

J. The audit and appeal procedures, including limitations period, applicable to the Oklahoma Sales Tax Code shall apply to prepaid wireless nine-one-one fees.

K. The Oklahoma Tax Commission shall establish procedures by which a seller may document that a sale is not a retail transaction. The procedures shall be in substantial conformity with the procedures for document sale for resale transactions under the Oklahoma Sales Tax Code.

L. Within thirty (30) days of receipt, the Oklahoma Tax Commission shall pay all remitted prepaid wireless nine-one-one fees to the governing bodies that the Statewide Nine-One-One Advisory Board has certified as eligible to receive funds. ~~Such~~ The certification shall be provided to the Oklahoma Tax Commission annually before July 1. Eligible governing bodies shall be those governing bodies that have imposed, and are collecting, the nine-one-one emergency wireless telephone fee as authorized in subsection A of Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title or, for those counties that have not assessed a nine-one-one emergency wireless telephone fee, the substate planning district designated by that county. It shall be the duty and obligation of the substate planning district to hold in a separate escrow account all fees paid on behalf of counties in its region that have not assessed a nine-one-one emergency wireless telephone fee pursuant to Section 2843.1 of this title, until such time as the county votes to assess the fee or develops wireless nine-one-one service pursuant to Section 2849 of this title. ~~Such distribution~~ Distribution shall be as follows:

1. Ninety-eight percent (98%) of the revenue from the fee is hereby allocated to the governing bodies as defined in Section 2843 of ~~Title 63 of the Oklahoma Statutes~~ this title and shall be paid to the governing bodies. The share for each governing body shall be

determined by dividing the population of the governing body by the total population of ~~governing bodies where the fee authorized under subsection A of Section 2843.1 of Title 63 of the Oklahoma Statutes is imposed~~ the state. The Oklahoma Tax Commission shall develop the formula on the basis of population residing within the governing body, as shown by the latest available Federal Census estimates as of July 1, or from the best information then available to the Commission when the information is not available from the latest available Federal Census; and

2. The remaining two percent (2%) of the revenue from the fee shall be retained by the Oklahoma Tax Commission to reimburse its direct cost of administering the collection and remittance of prepaid wireless nine-one-one fees.

Notwithstanding paragraphs 1 and 2 of this subsection, in the fiscal year in which this act takes effect, prior to making the distributions provided in paragraphs 1 and 2 of this subsection, the Oklahoma Tax Commission shall retain an amount not to exceed Three Hundred Thousand Dollars ($300,000.00) to cover programming and other one-time costs to implement a system to collect the prepaid wireless nine-one-one fees. Distributions to governing bodies that enact the wireless nine-one-one fee authorized under Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title after the effective date of this act shall commence in the calendar quarter after which the Oklahoma Tax Commission has received at least one hundred twenty (120) days' written notice from the governing body of the imposition of the fee.

M. Money distributed by the Oklahoma Tax Commission to a governing body pursuant to paragraph 1 of subsection L of this section shall be used only for services related to nine-one-one emergency wireless telephone services, including automatic number identification and automatic location information services.

N. The provisions of subsection C of Section 2817 of ~~Title 63 of the Oklahoma Statutes~~ this title shall apply to providers and sellers of prepaid wireless telecommunications service.

O. The prepaid wireless nine-one-one fee imposed by this section shall be the only nine-one-one funding obligation imposed with respect to prepaid wireless telecommunications services in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for nine-one-one funding purposes, upon

any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

P. Money collected pursuant to this section shall be used only for services related to nine-one-one emergency wireless telephone services, including automatic number identification and automatic location information services. The money remitted to the governing body and any other money collected to fund the emergency wireless telephone system shall be deposited in a special wireless nine-one-one account established by the governing body to which the Oklahoma Tax Commission has remitted the prepaid wireless nine-one-one fees and that has established emergency wireless telephone service. The special wireless nine-one-one account may be the same account that is or was established by the governing body under subsection C of Section 2843.1 of ~~Title 63 of the Oklahoma Statutes~~ this title. Amounts not used within a given year shall be carried forward.

Q. All wireless user information provided by a wireless service provider shall be deemed proprietary and is not subject to disclosure to the public or any other party.

Passed the House of Representatives the 8th day of March, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 18th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 19th

day of April, **20** 11,

at 12:07 **o'clock** P.M.

By: Jessica R. Rogers

Approved by the Governor of the State of Oklahoma the 25th **day of** April, **20** 11, **at** 11:53 **o'clock** a.M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

25th **day of** April, **20** 11,

at 1:26 **o'clock** P **M.**

By: Michelle R Day