

CHAPTER 1111

ENHANCED 911 EMERGENCY COMMUNICATION SYSTEMS

S.F. 2332

AN ACT relating to enhanced 911 emergency communication systems, including surcharges and the allocation of moneys collected from such surcharges and replacing the existing surcharge on prepaid wireless service with a new surcharge collected at the point of retail sale, and including effective and applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 34A.2, Code 2011, is amended to read as follows:

34A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Access line” means an exchange access line that has the ability to access dial tone and reach a public safety answering point.

2. “Administrator” means the administrator of the homeland security and emergency management division of the department of public defense.

3. “Communications service” means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device or wireless communications device.

4. “Communications service provider” means a service provider, public or private, that transports information electronically via landline, wireless, internet, cable, or satellite.

3. 5. “Competitive local exchange service provider” means the same as defined in section 476.96.

4. “Emergency 911 notification device” means a product capable of accessing a public safety answering point through the 911 system.

6. “Emergency communications service surcharge” means a charge established by the program manager in accordance with section 34A.7A.

5. 7. “Enhanced 911” or “E911” means a service that provides the user of a communications service with the ability to reach a public safety answering point by dialing using the digits 911, and that has the following additional features:

a. Routes an incoming 911 call to the appropriate public safety answering point.

b. Automatically provides voice, displays the name, address or location, and telephone number of an incoming 911 call and public safety agency servicing the location.

6. 8. “Enhanced 911 service area” means the geographic area to be serviced, or currently serviced under an enhanced 911 service plan, provided that an enhanced 911 service area must at minimum encompass one entire county. The enhanced 911 service area may encompass more than one county, and need not be restricted to county boundaries.

7. 9. “Enhanced 911 service plan” means a plan that includes the following information:

a. A description of the enhanced 911 service area.

b. A list of all public and private safety agencies within the enhanced 911 service area.

c. The number of public safety answering points within the enhanced 911 service area.

d. Identification of the agency responsible for management and supervision of the enhanced 911 emergency communication system.

e. (1) A statement of estimated costs to be incurred by the joint E911 service board or the department of public safety, including separate estimates of the following:

(a) Nonrecurring costs, including, but not limited to, public safety answering points, network equipment, software, database, addressing, initial training, and other capital and start-up expenditures, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider.

(b) Recurring costs, including, but not limited to, network access fees and other telephone charges, software, equipment, and database management, and maintenance, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider. Recurring costs shall not include personnel costs for a public safety answering point.

(2) Funds deposited in an E911 service fund are appropriated and shall be used for the payment of costs that are limited to nonrecurring and recurring costs directly attributable to the provision receipt and disposition of the 911 emergency telephone communication service and may include costs for portable and vehicle radios, communication towers and associated equipment, and other radios and associated equipment permanently located at the public safety answering point and as directed by either the joint E911 service board or the department of public safety call. Costs do not include expenditures for any other purpose, and specifically exclude costs attributable to other emergency services or expenditures for buildings or personnel, except for the costs of personnel for database management and personnel directly associated with addressing.

f. Current equipment operated by affected local exchange service providers, and central office equipment and technology upgrades necessary for the provider to implement enhanced 911 service within the enhanced 911 service area.

g. A schedule for implementation of the plan throughout the E911 service area. The schedule may provide for phased implementation.

h. The number of telephone access lines capable of access to 911 in the enhanced 911 service area.

i. The total property valuation in the enhanced 911 service area.

j. A plan to migrate to an internet protocol-enabled next generation network.

8. 10. "Local exchange carrier" means the same as defined in section 476.96.

9. 11. "Local exchange service provider" means a vendor engaged in providing telecommunications service between points within an exchange and includes but is not limited to a competitive local exchange service provider and a local exchange carrier.

12. "Prepaid wireless telecommunications service" means a wireless communications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

10. 13. "Program manager" means the E911 program manager appointed pursuant to section 34A.2A.

11. 14. "Provider" means a vendor who provides, or offers to provide, E911 equipment, installation, maintenance, or exchange access services within the enhanced 911 service area.

12. 15. "Public or private safety agency" means a unit of state or local government, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, emergency medical services, or hazardous materials response.

13. 16. "Public safety answering point" means a twenty-four-hour public safety communications facility that receives enhanced 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

17. "Wireless communications service" means commercial mobile radio service. "Wireless communications service" includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. "Wireless communications service" does not include a service whose customers do not have access to 911 or 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

18. "Wireless communications service provider" means a company that offers wireless communications service to users of wireless devices including but not limited to cellular, personal communications services, mobile satellite services, and enhanced specialized mobile radio.

14. 19. "Wireless E911 phase 1" means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and address of the tower that received the call to the appropriate public safety answering point.

15. ~~20.~~ “Wireless E911 phase 2” means a 911 call made from a wireless device in which the wireless service provider delivers the call-back number and the latitude and longitude coordinates of the wireless device to the appropriate public safety answering point.

16. ~~21.~~ “Wire-line E911 service surcharge” is means a charge set by the E911 service area operating authority and assessed on each wire-line access line which physically terminates within the E911 service area in accordance with section 34A.7.

Sec. 2. Section 34A.3, subsection 4, Code 2011, is amended to read as follows:

4. *Participation in joint E911 service board required.* A political subdivision ~~or state agency~~ having a public safety agency within its territory or jurisdiction shall participate in a joint E911 service board and cooperate in maintaining the E911 service plan.

Sec. 3. Section 34A.6, subsection 1, Code 2011, is amended to read as follows:

1. Before a joint E911 service board may request imposition of the wire-line surcharge by the program manager, the board shall submit the following question to voters, as provided in subsection 2, in the proposed E911 service area, and the question shall receive a favorable vote from a simple majority of persons submitting valid ballots on the following question within the proposed E911 service area:

Shall the following public measure be adopted?

YES

NO

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed E911 service area).

Sec. 4. Section 34A.6A, Code 2011, is amended to read as follows:

34A.6A Alternative surcharge.

1. Notwithstanding section 34A.6, the board may request imposition of a an alternative surcharge in an amount up to two dollars and fifty cents per month on each telephone access line. The board shall submit the question of the alternative surcharge to voters in the same manner as provided in section 34A.6. Not less than sixty days before the date of the referendum, the board shall notify all local exchange service providers in the county or counties comprising the E911 service area that a referendum on an alternative surcharge will be held. Not less than thirty days before the date of the referendum, the board shall publish in a newspaper of general circulation in the county or counties comprising the E911 service area a statement of estimated costs as described in section 34A.2, subsection 9, paragraph “e”, subparagraph (1), and justification of the need for the additional revenue. If approved, the alternative surcharge may be collected for a period of twenty-four months. At the end of the twenty-four-month period, the rate of the surcharge shall revert to one dollar per month, per access line.

2. Notwithstanding subsection 1, a temporary moratorium shall be applicable to a new surcharge authorized pursuant to this section until one hundred and fifty days after submission of recommendations by the E911 task force established by this Act to the general assembly.

Sec. 5. Section 34A.7, subsection 1, paragraph a, unnumbered paragraph 1, Code 2011, is amended to read as follows:

To encourage local implementation of E911 service, one source of funding for E911 emergency ~~telephone~~ communication systems shall come from a surcharge per month, per access line on each access line subscriber, except as provided in subsection 5, equal to the lowest amount of the following:

Sec. 6. Section 34A.7, subsection 1, paragraph b, subparagraph (1), Code 2011, is amended to read as follows:

(1) The program manager shall notify a local exchange service provider scheduled to provide exchange access line service to an E911 service area that implementation of an

E911 service plan has been approved by the joint E911 service board and by the service area referendum and that collection of the surcharge is to begin within ~~one hundred~~ sixty days.

Sec. 7. Section 34A.7, subsection 2, paragraph b, Code 2011, is amended to read as follows:

b. A local exchange service provider is not liable for an uncollected surcharge for which the local exchange service provider has billed a subscriber but not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing entitled, "E911 emergency telephone communications service surcharge".

Sec. 8. Section 34A.7, subsection 5, paragraph b, subparagraph (3), Code 2011, is amended to read as follows:

(3) If money remains in the fund after fully paying obligations under subparagraphs (1) and (2), the remainder may be accumulated in the fund as a carryover operating surplus. If the surplus is greater than twenty-five percent of the approved annual operating budget for the next year, the program manager shall reduce the surcharge by an amount calculated to result in a surplus of no more than twenty-five percent of the planned annual operating budget. After nonrecurring costs have been paid, if the surcharge is less than the maximum allowed and the fund surplus is less than twenty-five percent of the approved annual operating budget, the program manager shall, upon application of the joint E911 service board, increase the surcharge in an amount calculated to result in a surplus of twenty-five percent of the approved annual operating budget. The surcharge may only be adjusted once in a single year, upon ~~one hundred~~ sixty days' prior notice to the provider.

Sec. 9. Section 34A.7A, Code 2011, is amended to read as follows:

34A.7A Wireless Emergency communications service surcharge — fund established — distribution and permissible expenditures.

1. a. Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to sixty-five cents to be imposed on each ~~wireless~~ communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all ~~wireless~~ communications service numbers as provided by rule of the administrator. The surcharge shall not be imposed on wire-line-based communications or prepaid wireless telecommunications service.

b. The program manager shall provide no less than ~~one hundred~~ sixty days' notice of the surcharge to be imposed to each ~~wireless~~ communications service provider. The program manager, subject to the sixty-five cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

c. (1) The surcharge shall be collected as part of the ~~wireless~~ communications service provider's periodic billing to a subscriber. The surcharge shall appear as a single line item on a subscriber's periodic billing indicating that the surcharge is for E911 emergency telephone communications service. ~~In the case of prepaid wireless telephone service, this surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available.~~

(2) In compensation for the costs of billing and collection, the ~~wireless~~ communications service provider may retain one percent of the gross surcharges collected.

(3) The surcharges shall be remitted quarterly by the ~~wireless~~ communications service provider to the program manager for deposit into the fund established in subsection 2.

(4) A ~~wireless~~ communications service provider is not liable for an uncollected surcharge for which the ~~wireless~~ communications service provider has billed a subscriber but which has not been paid.

2. Moneys collected pursuant to subsection 1 and section 34A.7B, subsection 2, shall be deposited in a separate ~~wireless~~ E911 emergency communications fund within the state treasury under the control of the program manager. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in

the fund until expended as provided in this section. Moneys in the fund shall be expended and distributed in the following priority order:

a. An amount as appropriated by the general assembly to the administrator shall be allocated to the administrator and program manager for implementation, support, and maintenance of the functions of the administrator and program manager and to employ the auditor of state to perform an annual audit of the wireless E911 emergency communications fund.

~~b. The program manager shall allocate twenty-one percent of the total amount of surcharge generated to wireless carriers to recover their costs to deliver E911 phase 1 services. If the allocation in this paragraph is insufficient to reimburse all wireless carriers for such carrier's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of such carrier's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which such expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.~~

~~e. b.~~ The program manager shall reimburse wire-line carriers communication service providers on a calendar quarter basis for carriers' eligible expenses for transport costs between the selective router and the public safety answering points related to the delivery of wireless E911 phase 1 services.

~~d. c.~~ The program manager shall reimburse wire-line carriers and third-party E911 automatic location information database providers on a calendar quarterly basis for the costs of maintaining and upgrading the E911 components and functionalities beyond the input to the E911 selective router, including the E911 selective router and the automatic location information database.

~~e.~~ The program manager shall apply an amount up to five hundred thousand dollars per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.

~~f. d. (1) The program manager shall allocate an amount up to one hundred fifty-nine thousand dollars per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted an annual written request to the program manager in a form approved by the program manager by May 15 of each year. The program manager shall allocate to each joint E911 service board and to the department of public safety a minimum of one thousand dollars per calendar quarter for each public safety answering point within the service area of the department of public safety or joint E911 service board that has submitted an annual written request to the program manager in a form approved by the program manager by May 15 of each year.~~

~~(2) Upon retirement of outstanding obligations referred to in paragraph "e", the The amount allocated under this paragraph "f" "d" shall be twenty-five forty-six percent of the total amount of surcharge generated per calendar quarter allocated as follows:~~

~~(a) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.~~

~~(b) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the public safety answering point in the service area to the total number of wireless E911 calls originating in this state.~~

~~(c) Notwithstanding subparagraph divisions (a) and (b), the minimum amount allocated to each joint E911 service board and to the department of public safety shall be no less than one thousand dollars for each public safety answering point within the service area of the department of public safety or joint E911 service board.~~

~~(3) The funds allocated in this paragraph "f" "d" shall be used for communication equipment located inside utilized by the public safety answering points for the implementation and maintenance of wireless E911 phase 2 services. The joint E911 service boards and the department of public safety shall provide an estimate of phase 2 implementation costs to the program manager by January 1, 2005.~~

~~g. e.~~ If moneys remain in the fund after fully paying all obligations under paragraphs "a" through "f" "d", the remainder may be accumulated in the fund as a carryover operating surplus. This surplus shall be used to fund future phase 2 network and public safety answering point improvements, including hardware and software for an internet

protocol-enabled next generation network, and wireless carriers' transport costs related to wireless E911 services, if those costs are not otherwise recovered by wireless carriers through customer billing or other sources and approved by the program manager. Notwithstanding section 8.33, any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

~~h. f.~~ The administrator, in consultation with the program manager and the E911 communications council, shall adopt rules pursuant to chapter 17A governing the distribution of the surcharge collected and distributed pursuant to this subsection. The rules shall include provisions that all joint E911 service boards and the department of public safety which answer or service wireless E911 calls are eligible to receive an equitable portion of the receipts.

3. a. The program manager shall submit an annual report by January 15 of each year to the general assembly's standing committees on government oversight advising the general assembly of the status of E911 implementation and operations, including both wire-line and wireless services, the distribution of surcharge receipts, and an accounting of the revenues and expenses of the E911 program.

b. The program manager shall submit a calendar quarter report of the revenues and expenses of the E911 program to the fiscal services division of the legislative services agency.

c. The general assembly's standing committees on government oversight shall review the priorities of distribution of funds under this chapter at least every two years.

4. The amount collected from a wireless communications service provider and deposited in the fund, pursuant to section 22.7, subsection 6, information provided by a wireless communications service provider to the program manager consisting of trade secrets, pursuant to section 22.7, subsection 3, and other financial or commercial operations information provided by a wireless communications service provider to the program manager, shall be kept confidential as provided under section 22.7. This subsection does not prohibit the inclusion of information in any report providing aggregate amounts and information which does not identify numbers of accounts or customers, revenues, or expenses attributable to an individual wireless communications service provider.

5. ~~For purposes of this section, "wireless communications service" means commercial mobile radio service, as defined under sections 3(27) and 332(d) of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.; federal communications commission rules; and the Omnibus Budget Reconciliation Act of 1993. "Wireless communications service" includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. "Wireless communications service" does not include services whose customers do not have access to 911 or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.~~

Sec. 10. NEW SECTION. 34A.7B Prepaid wireless E911 surcharge.

1. As used in this section, unless the context otherwise requires:

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

b. "Department" means the department of revenue.

c. "Prepaid wireless E911 surcharge" means the surcharge that is required to be collected by a seller from a consumer in the amount established under this section.

d. "Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the federal communications commission.

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

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

2. There is imposed a prepaid wireless E911 surcharge of thirty-three cents on each retail transaction or, on or after the determination of an adjusted rate as determined pursuant to subsection 7, the adjusted rate.

3. The prepaid wireless E911 surcharge 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 E911 surcharge 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.

4. For purposes of subsection 3, 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, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of section 423.20 as that section applies to sourcing of a prepaid wireless calling service.

5. The prepaid wireless E911 surcharge 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 E911 surcharges that the seller collects from consumers as provided in subsection 3, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

6. The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

7. The prepaid wireless E911 surcharge shall be increased or reduced, as applicable, in an amount proportionate to any change to the surcharge imposed under section 34A.7A, subsection 1. The proportional increase or reduction shall be effective on the first day of the calendar month after the effective date of the change to the surcharge imposed under section 34A.7A, subsection 1. The department shall provide not less than thirty days' advance notice of such increase or reduction on the department's internet site.

8. If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, nonitemized price, the seller may elect not to apply the prepaid wireless E911 surcharge to the retail transaction. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars or less, shall be regarded as a minimal amount of service.

9. Prepaid wireless E911 surcharges collected by sellers shall be remitted to the department at the times and in the manner provided by chapter 423 with respect to the sales and use tax. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to sellers under chapter 423.

10. A seller may deduct and retain three percent of prepaid wireless E911 surcharges that are collected by the seller from consumers.

11. The audit and appeal procedures applicable under chapter 423 shall apply to prepaid wireless E911 surcharges.

12. The department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions under chapter 423.

13. The department shall transfer all remitted prepaid wireless E911 surcharges to the treasurer of state for deposit in the E911 emergency communications fund created under section 34A.7A, subsection 2, within thirty days of receipt after deducting an amount, not to exceed two percent of collected surcharges, that shall be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 surcharges.

14. The limitation of actions provisions under section 34A.7, subsection 6, shall apply to providers and sellers of prepaid wireless telecommunications service. In addition, a provider or seller of prepaid wireless telecommunications service shall not be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this or any other state, or

any political subdivision of this or any other state, in connection with any lawful investigation or other law enforcement activity by such investigative or law enforcement officer.

15. The prepaid wireless E911 surcharge imposed pursuant to this section shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service 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 E911 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

Sec. 11. Section 34A.15, subsection 1, paragraph c, Code Supplement 2011, is amended to read as follows:

c. One person appointed by the ~~Iowa association of chiefs of police and peace officers association.~~

Sec. 12. E911 TASK FORCE.

1. The homeland security and emergency management division of the department of public defense shall convene a task force of stakeholders to consider and offer recommendations regarding needed upgrades and enhancements to the state's E911 programs. Stakeholders shall include public safety and emergency management representatives, local public safety answering point personnel, telecommunications service providers, and state agencies that are directly involved in administering and providing E911 services in this state. Aspects of E911 service delivery for consideration by the task force shall include but not be limited to the following:

a. Enhanced technology needs of local E911 public safety answering points to ensure timely, quality emergency response services.

b. Identification of new wireless technologies used in E911 service delivery.

c. Funding needs to meet state and federal emergency communications technology mandates.

d. Potential wireless and wire-line surcharge adjustments to meet E911 service delivery demands, including specific recommendations on surcharge equalization and on the distribution formula of surcharge revenues.

e. Local and state E911 administration and governance.

2. The task force shall submit a report containing recommendations to the general assembly by December 1, 2012.

Sec. 13. EFFECTIVE DATE. The section of this Act enacting section 34A.7B takes effect January 1, 2013.

Sec. 14. APPLICABILITY. The section of this Act enacting section 34A.7B applies to retail sales of prepaid wireless telecommunications service on or after January 1, 2013.

Approved May 2, 2012