

AN ACT

ENTITLED, An Act to revise certain provisions regarding collection and administration of the 911 emergency surcharge and operation of 911 services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-45-1 be amended to read as follows:

34-45-1. Terms used in this chapter mean:

- (1) "Active prepaid wireless telecommunication service user account," a prepaid wireless service account:
 - (a) Which has a sufficient positive balance as of the last day of any month and is issued to a person who resides in a zip code, or purchases the service, within the state; or
 - (b) As estimated by dividing the total earned prepaid wireless telecommunications service revenue received by the service provider within the monthly reporting period by the industry's annually calculated average revenue per user as cited in the FCC's Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services as required under 47 U.S.C. § 332(c)(1)(C);
 - (c) Which is a retail sale by a prepaid wireless telecommunications service provider to a service user in the state;
- (2) "Basic 911," any service which provides the user of a calling device, which utilizes any communications technology, the ability to reach a public safety answering point to report police, fire, medical, or other emergency situations by dialing 911;
- (3) "Board," the South Dakota 911 Coordination Board created pursuant to § 34-45-18;
- (4) "Enhanced 911," any system which provides the user of a calling device, which utilizes

any communications technology, the ability to reach a public safety answering point by dialing the digits 911, and which routes that call to the appropriate public safety answer point and which automatically provides information about the service user to a 911 dispatcher including the user's name, location, call back number, and assigned emergency responders;

- (5) "Governing body," the board of county commissioners of a county or the city council or other governing body of a county or municipality or the board of directors of a special district;
- (6) "Interconnected Voice-over Internet Protocol (VoIP) service," any service with the following characteristics:
 - (a) Enables real-time two-way voice communication;
 - (b) Requires a broadband connection from the user's location;
 - (c) Requires internet protocol-compatible customer premise equipment; and
 - (d) Permits users generally to receive calls that originate and terminate on the public switched telephone network;
- (7) "911 emergency reporting system" or "911 system," any telecommunications service system consisting of network, database, and on-premises equipment which utilizes the single three-digit number 911 for reporting police, fire, medical, or other emergency situation;
- (8) "911 emergency surcharge," any charge set by the governing body and assessed on any service user of any telecommunications service, wireless telecommunications service, Interconnected Voice over Internet Protocol service, or wireless prepaid telecommunications service which physically terminates or originates within the governing body's designated 911 service area. The 911 emergency surcharge shall be

assessed and remitted for Interconnected Voice over Internet Protocol and wireless telecommunications service based upon the service user's place of primary use. Notwithstanding any other provision of this chapter and for purposes of the surcharge imposed by this chapter, the surcharge imposed upon wireless telecommunication services shall be administered in accordance with 4 U.S.C. §§ 116-126. For prepaid wireless telecommunications services, the term, 911 emergency surcharge, means any charge set and assessed for service provided to an active prepaid wireless telecommunications service user account within the state provided, however, that with respect to an active prepaid wireless telecommunications service user account under subsection 34-45-1(1)(c), the surcharge shall be two percent of the retail purchase price of such service;

- (9) "Nonrecurring costs," any capital or start-up expenditure such as telecommunications equipment, software, database, initial training, and the purchase or lease of subscriber names, addresses, and telephone information;
- (10) "Place of primary use," the street address where the customer's use of the communications service primarily occurs or the customer's registered location on the date the customer is billed;
- (11) "Prepaid wireless telecommunications service," any wireless telecommunications service that is activated in advance by payment for a finite dollar amount of service or for a finite number of minutes that terminate either upon use by any person or within a certain period of time following the initial purchase or activation, unless an additional payment is made;
- (12) "Public agency," any municipality, county, public district, or public authority located in whole or in part within this state which provides or has the authority to provide fire fighting, law enforcement, ambulance, emergency medical, or other emergency services;
- (13) "Public safety answering point," any twenty-four hour communications facility which

receives all 911 service calls and reroutes the requestor or information to appropriate public or private safety agencies;

- (14) "Recurring costs," any costs such as network access fee and other telephone charges, software, equipment, database management, maintenance, charges to maintain database of subscriber names, addresses, and telephone information from the local exchange access company. Recurring costs may include personnel expenses for a public safety answering point;
- (15) "Registered location," the most recent information obtained by an Interconnected Voice over Internet Protocol service provider that identifies the physical location of an end user;
- (16) "Service provider," any person or entity providing, offering to provide, or selling telecommunications service, wireless telecommunications service, prepaid wireless telecommunications service, or Interconnected Voice over Internet Protocol service;
- (17) "Service supplier," any person or entity who provides or offers to provide 911 system equipment, installation, maintenance, or exchange access services within the 911 service access area;
- (18) "Service user," any person who purchases telecommunications service, wireless telecommunications service, prepaid wireless telecommunications service, or Interconnected Voice over Internet Protocol service in this state;
- (19) "Service user line," the means by which a service user may place a call to a public safety answering point through the use of a telecommunications service, wireless telecommunications service, prepaid wireless telecommunications service, or Interconnected Voice over Internet Protocol service. In the case of multi-station network systems, service user lines shall be equal to the number of calls that can simultaneously be made from such system to the public switched telephone network;

- (20) "Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwave, electromagnetic means, or other similar means. The term does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television, and satellite stations regulated by the Federal Communications Commission and one-way cable television service;
- (21) "Wireless telecommunications service," commercial mobile radio service, as such term is defined in 47 C.F.R. 203 as of January 1, 2008.

Section 2. That § 34-45-2 be amended to read as follows:

34-45-2. The governing body of a public corporation may by ordinance authorize a 911 emergency reporting system. The ordinance shall include a description of the proposed 911 service area.

Section 3. That § 34-45-3 be amended to read as follows:

34-45-3. Any governing body may incur any nonrecurring or recurring costs for the installation, maintenance, or operation of a 911 system and may pay such costs in whole or in part from a 911 emergency surcharge. If the 911 system is to be provided for any territory included in the jurisdiction of the governing bodies of two or more public agencies the public agencies may enter into a joint agreement for such service.

Section 4. That § 34-45-4 be amended to read as follows:

34-45-4. Upon compliance with § 34-45-2, the governing body may assess a monthly uniform charge in an amount not to exceed seventy-five cents per service user line. Any prepaid wireless telecommunications service provider shall remit the 911 emergency surcharge for each active prepaid wireless telecommunication service user account to the South Dakota 911 coordination fund. The proceeds are continuously appropriated for reimbursement of nonrecurring and recurring costs of 911

service and operating expenses of the board. No such charge may be imposed upon more than one hundred service user lines or equivalent service, per customer account billed, per month. In the case of multi-station network systems, service user lines shall be equal to the number of calls that can simultaneously be made from such system to the public switched telephone network.

Section 5. That § 34-45-5 be amended to read as follows:

34-45-5. Any service user in the state is liable for the applicable 911 emergency surcharge pursuant to § 34-45-4. Any telecommunications service provider, wireless telecommunications service provider, or Interconnected Voice over Internet Protocol service provider shall collect and remit to the governing body the applicable 911 emergency surcharge which shall be stated separately in any billing statement, invoice, or receipt. All prepaid wireless telecommunications service providers shall remit the applicable 911 emergency surcharge for each active prepaid wireless telecommunication service user account in the state to the South Dakota 911 coordination fund. The prepaid wireless telecommunications service provider may seek reimbursement from their service user through whatever means are available to the provider.

Section 6. That § 34-45-6 be amended to read as follows:

34-45-6. Each service user is liable for any charge imposed pursuant to § 34-45-4 until it has been paid to the service provider.

Section 7. That § 34-45-7 be amended to read as follows:

34-45-7. Each telecommunications service provider, wireless telecommunications service provider, prepaid wireless telecommunications service provider, or Interconnected Voice over Internet Protocol service provider has no obligation to take any legal action to enforce the collection of any charge imposed pursuant to this chapter. Such action may be brought by or on behalf of the public agency imposing the charge. Each telecommunications service provider, wireless telecommunications service provider, prepaid wireless telecommunications service provider, or

Interconnected Voice over Internet Protocol service provider is not liable for such uncollected amounts.

Section 8. That § 34-45-8 be amended to read as follows:

34-45-8. Any charge imposed pursuant to § 34-45-4 and the amounts collected for telecommunications service, wireless telecommunications service, or Interconnected Voice over Internet Protocol service shall be remitted to the governing body and the amounts collected for prepaid wireless telecommunications service shall be remitted to the South Dakota 911 coordination fund not more than thirty days after the close of the calendar quarter which shall include a return to be in such form as required by the board together with the remittance of the amount of the charge payable. Each service provider shall maintain a record of collections made for a period of one year after the collection.

Section 9. That § 34-45-8.1 be repealed.

Section 10. That § 34-45-9 be amended to read as follows:

34-45-9. The service provider may deduct and retain one percent of the collected amount or twenty-five dollars, whichever amount is greater, each month as the cost of administration for collecting the charge.

Section 11. That § 34-45-10 be amended to read as follows:

34-45-10. At least once every calendar year, prior to September first, the governing body shall review the current charge and establish a rate of charge to be effective on the next January first, not to exceed the amount authorized, that together with any surplus revenues carried forward will produce sufficient revenues to fund the expenditures authorized by §§ 34-45-3 and 34-45-4. Any amount collected in excess of expenses within a given year shall be carried forward to the next year. Immediately upon making such determination and fixing such rate, the governing body shall publish its new rate, and it shall notify by registered mail every service provider at least ninety days before

such new rate will become effective. The governing body may, at its own expense, require an annual audit of a service provider's books and records concerning the collection and remittance of the charge authorized by §§ 34-45-3 and 34-45-4.

Section 12. That § 34-45-12 be amended to read as follows:

34-45-12. There is hereby created within the state treasury the South Dakota 911 coordination fund. Any funds collected from prepaid wireless telecommunications service pursuant to § 34-45-4 shall be deposited in the South Dakota 911 coordination fund. The board may authorize disbursements from the fund pursuant to this chapter for approved nonrecurring costs requested by the governing body of eligible 911 public safety answering points.

Section 13. That § 34-45-17 be amended to read as follows:

34-45-17. The 911 emergency reporting system provided by this chapter is within the governmental powers and authority of the governing body or public agency. In contracting for such 911 emergency reporting system or the provisioning of such 911 service, except for willful or wanton negligence or intentional acts, the governing body, public agency, service provider, and service supplier, their employees and agents, are immune from liability for a failure in the use or operation of the 911 system. The immunity provided by this section does not extend to the installation or maintenance of the 911 system.

Section 14. That § 34-45-18 be amended to read as follows:

34-45-18. There is hereby established the South Dakota 911 Coordination Board. The board shall set minimum standards for operation of public safety answering points, determine criteria for reimbursement for nonrecurring costs and the amount of reimbursement, and oversee the coordination of 911 services within the state.

Section 15. That § 34-45-18.1 be amended to read as follows:

34-45-18.1. The South Dakota 911 Coordination Board created pursuant to § 34-45-18 shall

consist of representatives from each of the following groups as appointed by the Governor for three-year terms, the initial appointments shall be for staggered terms:

- (1) One representative of the South Dakota Chapter of the Association of Public Safety Communication Officials;
- (2) One representative of the Dakota Chapter of the National Emergency Number Association;
- (3) Two representatives who are South Dakota service providers;
- (4) One representative who is an employee of the South Dakota Department of Public Safety;
- (5) Two representatives of the South Dakota Association of County Commissioners;
- (6) Two representatives of the South Dakota Municipal League;
- (7) One representative of the South Dakota Police Chiefs Association; and
- (8) One representative of the South Dakota Sheriffs Association.

The Governor shall be provided with a list of ten persons for each board position from each group represented. The Governor has the authority to reject any or all names provided. The Governor may also remove any person appointed to the board at any time without cause. The board may conduct public hearings to develop and recommend standards for operation and utilization of public safety answering points.

Section 16. That § 34-45-18.2 be amended to read as follows:

34-45-18.2. The board may promulgate rules pursuant to chapter 1-26 setting:

- (1) Minimum technical, operational, and procedural standards for the operation and utilization of a public safety answering point;
- (2) Requirements and amounts for reimbursement of recurring and nonrecurring costs; and
- (3) Standards for coordination of effective 911 service on a statewide basis.

Section 17. That § 34-45-18.3 be repealed.

Section 18. That § 34-45-19 be amended to read as follows:

34-45-19. The board is attached to the Department of Public Safety for administrative purposes. The department shall assist the board and coordinate the development of the coordinated statewide 911 system. The board may employ a 911 coordinator within the department to assist with the coordination of the statewide 911 system.

Section 19. That § 34-45-20 be amended to read as follows:

34-45-20. The board shall:

- (1) Evaluate all of the current public safety answering points and systems throughout the State of South Dakota for their capability to adequately and efficiently administer systems;
- (2) Develop plans for the implementation for a uniform statewide 911 system covering the entire state or so much as is practicable;
- (3) Monitor the number and location of public safety answering points or systems and the use of 911 emergency surcharge funds in their administrative and operational budgets;
- (4) Develop criteria and minimum standards for operating and financing public safety answering points or systems;
- (5) Develop criteria for the eligibility and amount of reimbursement of recurring and nonrecurring costs of public safety answering points or systems;
- (6) Develop criteria for the implementation of performance audits of the use of the 911 fees utilized in the operation of the 911 system. The audit shall be conducted by the Department of Legislative Audit and shall be presented to the board and the Legislature; and
- (7) Report annually to the Governor and the Legislature about the operations and findings the board and any recommendations for changes to 911 service in the state.

Section 20. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as follows:

No later than July 1, 2010, each governing body and 911 system shall provide enhanced 911 service.

Section 21. Notwithstanding any provision of chapter 34-45, no retailer purchasing prepaid wireless telecommunication services or devices for resale is required to collect or remit any 911 emergency surcharge.

An Act to revise certain provisions regarding collection and administration of the 911 emergency surcharge and operation of 911 services.

=====
I certify that the attached Act
originated in the
SENATE as Bill No. 143
Secretary of the Senate
=====

President of the Senate

Attest:

Secretary of the Senate
Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 143
File No.
Chapter No.

=====
Received at this Executive Office
this ___ day of _____,
20___ at _____ M.
By _____
for the Governor
=====

The attached Act is hereby
approved this ___ day of
_____, A.D., 20___

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20___
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State