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HOUSE BILL 32

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE ENHANCED 911 ACT AND AMENDING SECTIONS OF THE ENHANCED 911 BOND ACT TO PROVIDE FOR SURCHARGES TO BE IMPOSED ON COMMUNICATIONS SERVICES, INCLUDING VOICE-OVER-INTERNET PROTOCOL SUBSCRIPTIONS AND ELECTRONIC DATA NETWORKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 63-9D-3 NMSA 1978 (being Laws 1989, Chapter 25, Section 3, as amended) is amended to read:

"63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

A. "911 [~~emergency surcharge~~] call" means any real-time communication, message, signal or transmission between a person needing assistance and a public safety answering point call-taker;

B. "enhanced 911 surcharge" means the monthly

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1 uniform charge assessed on each access line in the state, ~~[and]~~  
2 on each active number for a commercial mobile radio service  
3 subscriber ~~[whose billing address is]~~ and on each active number  
4 for a VoIP service subscriber in New Mexico and the charge  
5 assessed on any other consumer purchase of communication  
6 service provided by a communications service provider that  
7 enables communication between a person needing assistance and a  
8 public safety answering point call-taker. The enhanced 911  
9 surcharge shall be assessed to the retail customer based upon  
10 the maximum number of active telephone numbers capable of  
11 simultaneously contacting the local public safety answering  
12 point; provided that an enhanced 911 surcharge shall not be  
13 assessed on the provision of broadband internet access service;

14 ~~[B-]~~ C. "911 service area" means the area  
15 designated by the fiscal agent, local governing body or the  
16 division to receive enhanced 911 service;

17 ~~[G-]~~ D. "access line" means a telecommunications  
18 company's line that has the capability to reach local public  
19 safety agencies by dialing 911, but does not include a line  
20 used for the provision of interexchange services or commercial  
21 mobile radio service;

22 ~~[D-]~~ E. "commercial mobile radio service" means  
23 service provided by a wireless real-time two-way voice  
24 communication device, including:

- 25 (1) radio-telephone communications used in

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1 cellular telephone service;

2 (2) the functional or competitive equivalent  
3 of radio-telephone communications used in cellular telephone  
4 service;

5 (3) a personal communications service; or

6 (4) a network radio access line;

7 [~~E.~~] F. "commercial mobile radio service provider"  
8 means a person who provides commercial mobile radio services,  
9 including a person who purchases commercial mobile radio  
10 service from a provider and resells that service;

11 [~~F.~~] G. "commission" means the public regulation  
12 commission;

13 [~~G.~~] H. "communication service" means any service  
14 that:

15 (1) uses telephone, internet protocol  
16 addresses, electronic data networks or protocols or their  
17 functional equivalents or successors;

18 (2) is capable of accessing, connecting with  
19 or interfacing with the enhanced 911 system by dialing,  
20 initializing or otherwise activating the enhanced 911 system  
21 regardless of the transmission medium or technology employed;  
22 and

23 (3) provides or enables real-time or  
24 interactive communication;

25 I. "communications service provider" means any

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1 entity that provides communication services;

2           J. "database" means information that is collected,  
3 formatted and disseminated and that is necessary for the  
4 functioning of the enhanced 911 system, including geographic  
5 information system (GIS) addressing and digital mapping  
6 information;

7           ~~[H.]~~ K. "department" means the taxation and revenue  
8 department;

9           ~~[I.]~~ L. "division" means the local government  
10 division of the department of finance and administration;

11           ~~[J.]~~ M. "enhanced 911 system" means a landline,  
12 ~~[ø]~~ wireless, NG-911 or ESInet system consisting of network  
13 switching equipment, database, mapping and on-premises  
14 equipment that uses the single three-digit number 911 for  
15 reporting police, fire, medical or other emergency situations,  
16 thereby enabling a caller to reach a public safety answering  
17 point to report emergencies by dialing 911, and includes the  
18 capability to:

19                   (1) selectively route incoming 911 calls to  
20 the appropriate public safety answering point operating in a  
21 911 service area;

22                   (2) automatically display the name, address  
23 and telephone number of an incoming 911 call on a video monitor  
24 at the appropriate public safety answering point;

25                   (3) provide one or more access paths for

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1 communications between users at different geographic locations  
2 through a network system that may be designed for voice or  
3 data, or both, and may feature limited or open access and may  
4 employ appropriate analog, digital switching or transmission  
5 technologies; and

6 (4) relay to a designated public safety  
7 answering point a 911 caller's number and base station or cell  
8 site location and the latitude and longitude of the 911  
9 caller's location in relation to the designated public safety  
10 answering point;

11 [~~K-~~] N. "enhanced 911 equipment" means the public  
12 safety answering point equipment directly related to the  
13 operation of an enhanced 911 system, including automatic number  
14 identification or automatic location identification controllers  
15 and display units, printers, logging recorders and software  
16 associated with call detail recording, call center work  
17 stations, training, latitude and longitude base station or cell  
18 site location data and GIS equipment necessary to obtain and  
19 process locational map and emergency service zone data for  
20 landline and wireless callers;

21 [~~L-~~] O. "equipment supplier" means a person who  
22 provides or offers to provide [~~telecommunications~~]  
23 communications equipment necessary for the establishment of  
24 enhanced 911 services;

25 [~~M-~~] P. "ESInet" means emergency services internet

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1 protocol network, an internet-protocol-based, multipurpose  
2 inter-network supporting local, regional, state and national  
3 public safety communications services in addition to 911;

4 Q. "fiscal agent" means the local governing body  
5 that administers grants from the fund for a given locality or  
6 region by agreement;

7 [~~N.~~] R. "fund" means the enhanced 911 fund;

8 [~~Q.~~] S. "local governing body" means the board of  
9 county commissioners of a county or the governing body of a  
10 municipality as defined in the Municipal Code;

11 T. "NG-911" means a next generation 911 system  
12 consisting of network, hardware, software, data and operational  
13 policies and procedures that:

14 (1) provides standardized interfaces from call  
15 and message services;

16 (2) processes all types of emergency calls,  
17 including non-voice (multimedia) messages;

18 (3) acquires and integrates additional data  
19 useful to call routing and handling;

20 (4) delivers the calls, messages and data to  
21 appropriate public safety answering points and other  
22 appropriate emergency entities;

23 (5) supports data and communications needs for  
24 coordinated incident response and management; and

25 (6) provides a secure environment for

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1 emergency communications;

2 [P-] U. "proprietary information" means customer  
3 lists, customer counts, technology descriptions or trade  
4 secrets, including the actual or development costs of  
5 individual components of an enhanced 911 system; provided that  
6 such information is designated as proprietary by the  
7 ~~[commercial mobile radio]~~ communications service provider ~~[or~~  
8 ~~telecommunications company]~~; and provided further that  
9 "proprietary information" does not include individual payments  
10 made by the division or any list of names and identifying  
11 information of subscribers who have not paid the surcharge;

12 [Q-] V. "public safety answering point" means a  
13 twenty-four-hour local communications facility that receives  
14 911 service calls and directly dispatches emergency response  
15 services or that relays calls to the appropriate public or  
16 private safety agency;

17 [R-] W. "subscriber" means a person who ~~[is a~~  
18 ~~retail purchaser of telecommunications]~~ purchases communication  
19 services at retail from a communications service provider that  
20 are capable of originating a 911 call;

21 [S-] X. "surcharge" means the 911 emergency  
22 surcharge;

23 Y. "surcharge collected" means the amount of  
24 enhanced 911 surcharge billed or received or deemed to have  
25 been received by the seller or provider, consistent with the

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1 seller's or provider's method of accounting, including accrual  
2 or cash;

3 ~~[F.]~~ Z. "telecommunications company" means a person  
4 who provides wire telecommunications services that are capable  
5 of originating a 911 call; ~~[and~~

6 ~~U.]~~ AA. "vendor" means a person that provides 911  
7 equipment, service or network support;

8 BB. "VoIP" means "interconnected voice-over-  
9 internet protocol service" as defined in the Code of Federal  
10 Regulations, Title 47, Part 9, Section 9.3, as amended; and

11 CC. "VoIP service provider" or "interconnected  
12 voice-over-internet protocol service provider" means an entity  
13 that provides interconnected voice-over-internet protocol  
14 service to end users."

15 **SECTION 2.** Section 63-9D-5 NMSA 1978 (being Laws 1989,  
16 Chapter 25, Section 5, as amended) is amended to read:

17 "63-9D-5. IMPOSITION OF SURCHARGE.--

18 A. There is imposed a 911 emergency surcharge in  
19 the amount of fifty-one cents (\$.51) to be billed to each  
20 subscriber access line by a ~~[telecommunications company and]~~  
21 communications service provider, on each active number for a  
22 commercial mobile radio service subscriber ~~[whose billing~~  
23 ~~address]~~ and on each active number for a VoIP service  
24 subscriber that allows communication between a person needing  
25 assistance and a public safety answering point call-taker. The



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1 surcharge is imposed on all subscribers whose place of primary  
2 use, as defined in the federal Mobile Telecommunications  
3 Sourcing Act, is in New Mexico; provided, however, that the  
4 surcharge shall not be imposed upon subscribers receiving  
5 reduced rates pursuant to the Low Income Telephone Service  
6 Assistance Act; and provided further that the surcharge shall  
7 not apply to prepaid wireless communication service; and  
8 provided further that a 911 emergency surcharge shall not be  
9 assessed on the provision of broadband internet access service.

10 B. ~~[Commercial mobile radio]~~ All communications  
11 service providers shall be required to bill and collect the  
12 surcharge from their subscribers whose places of primary use,  
13 as defined in the federal Mobile Telecommunications Sourcing  
14 Act, are in New Mexico. ~~[Telecommunications companies shall be~~  
15 ~~required to bill and collect the surcharge from their~~  
16 ~~subscribers.]~~ The surcharge required to be collected by the  
17 ~~[commercial mobile radio service provider or telecommunications~~  
18 ~~company]~~ communications service provider shall be added to and  
19 stated clearly and separately in the billings to the  
20 subscriber. The surcharge collected by the ~~[commercial mobile~~  
21 ~~radio service provider or telecommunications company]~~  
22 communications service provider shall not be considered revenue  
23 of the ~~[commercial mobile radio]~~ communications service  
24 provider ~~[or telecommunications company]~~.

25 C. A billed subscriber is liable for payment of the

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1 911 emergency surcharge until it has been paid to the  
2 [~~commercial mobile radio~~] communications service provider [~~or~~  
3 ~~telecommunications company~~].

4 D. A [~~commercial mobile radio~~] communications  
5 service provider [~~or telecommunications company~~] has no  
6 obligation to take legal action to enforce the collection of  
7 the surcharge; an action may be brought by or on behalf of the  
8 department. A [~~commercial mobile radio~~] communications service  
9 provider [~~or telecommunications company~~], upon request and not  
10 more than once a year, shall provide to the department a list  
11 of the surcharge amounts uncollected, along with the names and  
12 addresses of subscribers who carry a balance that can be  
13 determined by the [~~commercial mobile radio~~] communications  
14 service provider [~~or telecommunications company~~] to be  
15 nonpayment of the surcharge. The [~~commercial mobile radio~~]  
16 communications service provider [~~or telecommunications company~~]  
17 shall not be held liable for uncollected surcharge amounts.

18 [~~E. The surcharge shall commence with the first~~  
19 ~~billing period of each subscriber on or following July 1,~~  
20 ~~2005.]"~~

21 SECTION 3. Section 63-9D-7 NMSA 1978 (being Laws 1989,  
22 Chapter 25, Section 7, as amended) is amended to read:

23 "63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--  
24 [~~A.~~] The surcharge collected shall be remitted monthly to the  
25 department, which shall administer and enforce collection of

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1 the surcharge in accordance with the Tax Administration Act.  
2 The surcharge shall be remitted to the department no later than  
3 the twenty-fifth day of the month following the month in which  
4 the surcharge was imposed. At that time, a return for the  
5 preceding month shall be filed with the department in such form  
6 as the department and [~~telecommunications company or commercial~~  
7 ~~mobile radio~~] communications service provider shall agree upon.  
8 A [~~telecommunications company or commercial mobile radio~~]  
9 communications service provider required to file a return shall  
10 deliver the return together with a remittance of the amount of  
11 the surcharge payable to the department. The  
12 [~~telecommunications company or commercial mobile radio~~]  
13 communications service provider shall maintain a record of the  
14 amount of each surcharge collected pursuant to the Enhanced 911  
15 Act. The record shall be maintained for a period of three  
16 years after the time the surcharges were collected.

17 [~~B. From a remittance to the department made on or~~  
18 ~~before the date it becomes due, a telecommunications company or~~  
19 ~~commercial mobile radio service provider required to make a~~  
20 ~~remittance shall be entitled to deduct and retain one percent~~  
21 ~~of the collected amount or fifty dollars (\$50.00), whichever is~~  
22 ~~greater, as the administrative cost for collecting the~~  
23 ~~surcharge.]"~~

24 SECTION 4. Section 63-9D-8 NMSA 1978 (being Laws 1989,  
25 Chapter 25, Section 8, as amended) is amended to read:

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1 "63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--  
2 DISBURSEMENT--REPORTS TO LEGISLATURE.--

3 A. There is created in the state treasury a fund  
4 that shall be known as the "enhanced 911 fund". The fund shall  
5 be administered by the division.

6 B. All surcharges collected and remitted to the  
7 department shall be deposited in the fund.

8 C. Money deposited in the fund and income earned by  
9 investment of the fund are appropriated for expenditure in  
10 accordance with the Enhanced 911 Act and shall not revert to  
11 the general fund.

12 D. Payments shall be made from the fund to, or on  
13 behalf of, participating local governing bodies or their fiscal  
14 agents upon vouchers signed by the director of the division  
15 solely for the purpose of reimbursing local governing bodies or  
16 their fiscal agents [~~commercial mobile radio~~] and  
17 communications service providers [~~or telecommunications~~  
18 ~~companies~~] for their costs of providing enhanced 911 service.

19 A person who purchases [~~commercial mobile radio services or~~  
20 ~~telecommunications~~] communication services from a [~~commercial~~  
21 ~~mobile radio~~] communications service provider [~~or~~  
22 ~~telecommunications company~~] for the purpose of reselling that  
23 service is not eligible for reimbursement from the fund. Money  
24 in the fund may be used for the payment of bonds issued  
25 pursuant to the Enhanced 911 Bond Act.

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1           E. Annually, the division may expend no more than  
2 five percent of all money deposited annually in the fund for  
3 administering and coordinating activities associated with  
4 implementation of the Enhanced 911 Act.

5           F. Money in the fund may be awarded as grant  
6 assistance to provide enhanced 911 service and equipment upon  
7 application of local governing bodies or their fiscal agents to  
8 the division and upon approval by the state board of finance.  
9 If it is anticipated that the funds available to pay all  
10 requests for grants will be insufficient, the state board of  
11 finance may reduce the percentage of assistance to be awarded.  
12 In the event of such reduction, the state board of finance may  
13 award supplemental grants to local governing bodies that  
14 demonstrate financial hardship.

15           G. After requesting enhanced 911 service from a  
16 [~~telecommunications company or commercial mobile radio~~]  
17 communications service provider, a local governing body may, by  
18 ordinance or resolution, recover from the fund an amount  
19 necessary to recover the costs of providing the enhanced 911  
20 system in its designated 911 service area. The division, on  
21 behalf of local governing bodies, shall directly pay or  
22 reimburse [~~commercial mobile radio~~] communications service  
23 providers [~~and telecommunications companies~~] for their costs of  
24 providing enhanced 911 service. If a [~~commercial mobile radio~~]  
25 communications service provider [~~or telecommunications company~~]

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1 does not receive payment or reimbursement for the costs of  
2 providing enhanced 911 service, the provider is not obligated  
3 to provide that service.

4 H. The division shall report to the legislature  
5 each session the status of the fund and whether the current  
6 level of the 911 emergency surcharge is sufficient, excessive  
7 or insufficient to fund the anticipated needs for the next  
8 year."

9 SECTION 5. Section 63-9D-8.1 NMSA 1978 (being Laws 1990,  
10 Chapter 87, Section 3, as amended) is amended to read:

11 "63-9D-8.1. DIVISION POWERS.--

12 A. The division may adopt reasonable rules  
13 necessary to carry out the provisions of the Enhanced 911 Act.

14 B. The division may fund enhanced 911 systems  
15 pursuant to the provisions of the Enhanced 911 Act.

16 C. Division powers are limited and do not include  
17 power to intervene between two vendors or restrict marketing  
18 efforts of vendors.

19 D. The division and the local governing body may  
20 establish 911 service areas.

21 E. Unless otherwise provided by law, no rule  
22 affecting any person, agency, local governing body [~~commercial~~  
23 ~~mobile radio~~] or communications service provider [~~or~~  
24 ~~telecommunications company~~] shall be adopted, amended or  
25 repealed without a public hearing on the proposed action before

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1 the director of the division or a hearing officer designated by  
2 the director. The public hearing shall be held in Santa Fe  
3 unless otherwise permitted by statute. Notice of the subject  
4 matter of the rule, the action proposed to be taken, the time  
5 and place of the hearing, the manner in which interested  
6 persons may present their views and the method by which copies  
7 of the proposed rule or proposed amendment or repeal of an  
8 existing rule may be obtained shall be published once at least  
9 thirty days prior to the hearing in a newspaper of general  
10 circulation and mailed at least thirty days prior to the  
11 hearing date to all persons or agencies who have made a written  
12 request for advance notice of the hearing and to all local  
13 governing bodies [~~telecommunications companies and commercial~~  
14 ~~mobile radio~~] and communications service providers.

15 F. All rules shall be filed in accordance with the  
16 State Rules Act."

17 SECTION 6. Section 63-9D-10 NMSA 1978 (being Laws 1989,  
18 Chapter 25, Section 10, as amended) is amended to read:

19 "63-9D-10. IMMUNITY.--Enhanced 911 systems are within the  
20 governmental powers and authorities of the local governing body  
21 or state agency in the provision of services for the public  
22 health, welfare and safety. In contracting for such services  
23 or the provisioning of an enhanced 911 system, except for  
24 willful or wanton negligence or intentional acts, the local  
25 governing body, public agency, equipment supplier,

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1 ~~[telecommunications company, commercial mobile radio]~~  
2 communications service provider and their employees and agents  
3 are not liable for damages resulting from installing,  
4 maintaining or providing enhanced 911 systems or transmitting  
5 911 calls."

6 SECTION 7. Section 63-9D-11 NMSA 1978 (being Laws 1989,  
7 Chapter 25, Section 11, as amended) is amended to read:

8 "63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

9 A. Private listing subscribers waive the privacy  
10 afforded by nonlisted or nonpublished numbers only to the  
11 extent that the name and address associated with the telephone  
12 number may be furnished to the enhanced 911 system for call  
13 routing or for automatic retrieval of location information in  
14 response to a call initiated to 911.

15 B. Information regarding the identity of private  
16 listing subscribers provided by a communications service  
17 provider, including names, addresses, telephone numbers or  
18 other identifying information, is not a public record and is  
19 not available for inspection.

20 C. Proprietary information provided by a  
21 ~~[commercial mobile radio]~~ communications service provider [~~or~~  
22 ~~telecommunications company~~] is not public information and may  
23 not be released to any person without the express permission of  
24 the submitting provider, except that information may be  
25 released or published as aggregated data that does not identify

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1 the number of subscribers or identify enhanced 911 system costs  
2 attributable to an individual [~~commercial mobile radio~~  
3 communications service provider [~~or telecommunications~~  
4 ~~company~~]."

5 SECTION 8. Section 63-9D-11.1 NMSA 1978 (being Laws 1993,  
6 Chapter 48, Section 13) is amended to read:

7 "63-9D-11.1. VIOLATION--PENALTIES.--

8 A. Any person who knowingly dials 911 for the  
9 purpose of reporting a false alarm, making a false complaint or  
10 reporting false information that results in an emergency  
11 response by any public safety agency is guilty of a petty  
12 misdemeanor and shall be punished by a fine of not more than  
13 five hundred dollars (\$500) or imprisonment for a term not to  
14 exceed six months, or both.

15 B. A municipality or a county may adopt an  
16 ordinance making it a violation for any person to knowingly  
17 dial 911 for the purpose of reporting a false alarm, making a  
18 false complaint or reporting false information that results in  
19 an emergency response by any public safety agency. The  
20 municipality may adopt and enforce the ordinance pursuant to  
21 the authority provided in Section 3-17-1 NMSA 1978. The county  
22 may adopt and enforce the ordinance pursuant to the authority  
23 provided in Section 4-37-1 NMSA 1978."

24 SECTION 9. Section 63-9D-14 NMSA 1978 (being Laws 1990,  
25 Chapter 61, Section 3, as amended) is amended to read:

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1 "63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE  
2 OF REVENUES--LIMITATION ON ISSUANCE.--

3 A. In addition to any other law authorizing the  
4 board to issue revenue bonds, the board may issue enhanced 911  
5 bonds pursuant to the Enhanced 911 Bond Act for the purposes  
6 specified in this section.

7 B. Enhanced 911 bonds may be issued for:

8 (1) acquiring, extending, enlarging,  
9 bettering, repairing, improving, constructing, purchasing,  
10 furnishing, equipping or rehabilitating the enhanced 911  
11 system, the payment of which shall be secured by enhanced 911  
12 revenues;

13 (2) reimbursing a [~~commercial mobile radio~~  
14 communications service provider [~~or telecommunications company~~]  
15 for its reasonable costs of providing enhanced 911 service, the  
16 payment of which shall be secured by enhanced 911 revenues; or

17 (3) reimbursing a local governing body or its  
18 fiscal agent for its reasonable costs of providing the enhanced  
19 911 system, the payment of which shall be secured by enhanced  
20 911 revenues.

21 C. The board may pledge irrevocably enhanced 911  
22 revenues in the manner set forth in Subsection B of this  
23 section to the payment of the interest on and principal of  
24 enhanced 911 bonds. Any general determination by the board  
25 that expenditures are reasonably related to and constitute a

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1 part of a specified enhanced 911 project shall be conclusive if  
2 set forth in the proceedings authorizing the enhanced 911  
3 bonds."

4 SECTION 10. A new section of the Enhanced 911 Act is  
5 enacted to read:

6 "[NEW MATERIAL] PREPAID WIRELESS ENHANCED 911  
7 SURCHARGE--COLLECTION AND ADMINISTRATION OF SURCHARGE--  
8 LIABILITY OF SELLERS--EXCLUSIVITY OF SURCHARGE.--

9 A. As used in this section:

10 (1) "consumer" means a person who purchases  
11 prepaid wireless communication service in a retail transaction;

12 (2) "prepaid wireless communication service"  
13 means a wireless communication service that allows a caller to  
14 dial 911 to access the 911 system, which service must be paid  
15 for in advance and is sold in predetermined units or dollars of  
16 which the number declines with use in a known amount;

17 (3) "prepaid wireless enhanced 911 surcharge"  
18 means the charge that is required to be collected by a seller  
19 from a consumer in the amount established under Subsection B of  
20 this section;

21 (4) "provider" means a person that provides  
22 prepaid wireless communication service pursuant to a license  
23 issued by the federal communications commission;

24 (5) "retail transaction" means the purchase of  
25 prepaid wireless communication service from a seller for any

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1 purpose other than resale;

2 (6) "seller" means a person who sells prepaid  
3 wireless communication service to another person; and

4 (7) "wireless communication service" means  
5 commercial mobile radio service as defined by Section 20.3 of  
6 Title 47 of the Code of Federal Regulations, as amended.

7 B. A prepaid wireless enhanced 911 surcharge of one  
8 and thirty-eight hundredths percent is imposed on the gross  
9 value of each retail transaction. The prepaid wireless  
10 enhanced 911 surcharge shall be collected by the seller from  
11 the consumer with respect to each retail transaction occurring  
12 in this state. The amount of the prepaid wireless enhanced 911  
13 surcharge shall be either separately stated on an invoice,  
14 receipt or other similar document that is provided to the  
15 consumer by the seller, or otherwise disclosed to the consumer.

16 C. For purposes of Subsection B of this section, a  
17 retail transaction that is effected in person by a consumer at  
18 a business location of the seller shall be treated as occurring  
19 in this state if that business location is in this state, and  
20 any other retail transaction shall be treated as occurring in  
21 this state if the retail transaction is treated as occurring in  
22 this state for purposes of the Gross Receipts and Compensating  
23 Tax Act.

24 D. The prepaid wireless enhanced 911 surcharge is  
25 the liability of the consumer and not of the seller or of any

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1 provider, except that the seller shall be liable to remit all  
2 prepaid wireless enhanced 911 surcharges that the seller  
3 collects from consumers as provided in this section, including  
4 all such surcharges that the seller is deemed to collect where  
5 the amount of the surcharge has not been separately stated on  
6 an invoice, receipt or other similar document provided to the  
7 consumer by the seller.

8 E. The amount of the prepaid wireless enhanced 911  
9 surcharge that is collected by a seller from a consumer, if  
10 such amount is separately stated on an invoice, receipt or  
11 other similar document provided to the consumer by the seller,  
12 shall not be included in the base for measuring any tax, fee,  
13 surcharge or other charge that is imposed by this state, any  
14 political subdivision of this state or any intergovernmental  
15 agency.

16 F. When prepaid wireless communication service is  
17 sold with one or more other products or services for a single,  
18 non-itemized price, the percentage specified in Subsection B of  
19 this section shall apply to the entire non-itemized price  
20 unless the seller can identify and disclose to the purchaser  
21 the actual dollar amount of the prepaid wireless communication  
22 service included in the package or the portion of the price  
23 that is attributable to the prepaid wireless communication  
24 service by reasonable and verifiable standards from its books  
25 and records that are kept in the regular course of business for

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1 other purposes, including non-tax purposes. If such  
2 identification and disclosure can be made, the percentage shall  
3 be applied to that portion of the package. However, if a  
4 minimal amount of prepaid wireless communication service is  
5 sold with a prepaid wireless device for a single, non-itemized  
6 price, the seller may elect not to apply the percentage  
7 specified in Subsection B of this section to such transaction.  
8 For purposes of this subsection, an amount of service  
9 denominated as ten minutes or less, or five dollars (\$5.00) or  
10 less, is minimal.

11 G. Prepaid wireless enhanced 911 surcharges  
12 collected by sellers shall be remitted to the department at the  
13 times and in the manner provided by with respect to the Gross  
14 Receipts and Compensating Tax Act. The department shall  
15 establish registration and payment procedures that  
16 substantially coincide with the registration and payment  
17 procedures that apply to the Gross Receipts and Compensating  
18 Tax Act.

19 H. The audit and appeal procedures applicable to  
20 the Gross Receipts and Compensating Tax Act shall apply to  
21 prepaid wireless enhanced 911 surcharges.

22 I. The department shall establish procedures by  
23 which a seller of prepaid wireless communication services may  
24 document that a sale is not a retail transaction, which  
25 procedures shall substantially coincide with the procedures for

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1 documenting sale for resale transactions for the Gross Receipts  
2 and Compensating Tax Act.

3 J. No provider or seller of prepaid wireless  
4 communication services shall be liable for damages to any  
5 person resulting from or incurred in connection with the  
6 provision of, or failure to provide, 911 or enhanced 911  
7 service, or for identifying, or failing to identify, the  
8 telephone number, address, location or name associated with any  
9 person or device that is accessing or attempting to access 911  
10 or enhanced 911 service.

11 K. No provider or seller of prepaid wireless  
12 communication services shall be liable for damages to any  
13 person resulting from or incurred in connection with the  
14 provision of any assistance to any investigative or law  
15 enforcement officer of the United States, this or any other  
16 state, or any political subdivision of this or any other state,  
17 in connection with any investigation or other law enforcement  
18 activity by such law enforcement officer.

19 L. In addition to the protection from liability  
20 provided by Subsections J and K of this section, each provider  
21 and seller shall be entitled to the further protection from  
22 liability as provided pursuant to Section 63-9D-10 NMSA 1978.

23 M. The prepaid wireless enhanced 911 surcharge  
24 applies to retail transactions occurring on or after July 1,  
25 2017."

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SECTION 11. REPEAL.--Section 63-9D-4.1 NMSA 1978 (being  
Laws 2003, Chapter 339, Section 1) is repealed.

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