

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 32

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

AN ACT

RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE ENHANCED 911 ACT AND AMENDING A SECTION 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~~" means the monthly
~~uniform charge assessed on each access line in the state and on~~
~~each active number for a commercial mobile radio service~~
~~subscriber whose billing address is in New Mexico]~~ call" means
any real-time communication, message, signal or transmission

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1 between a person needing assistance and a public safety
2 answering point call-taker by dialing 9-1-1 or its equivalent;

3 B. "911 service area" means the area designated by
4 the fiscal agent, local governing body or the division to
5 receive enhanced 911 service;

6 C. "access line" means a telecommunications
7 company's line that has the capability to reach local public
8 safety agencies by dialing 911, but does not include a line
9 used for the provision of interexchange services or commercial
10 mobile radio service;

11 D. "commercial mobile radio service" means service
12 provided by a wireless real-time two-way voice communication
13 device, including:

14 (1) radio-telephone communications used in
15 cellular telephone service;

16 (2) the functional or competitive equivalent
17 of radio-telephone communications used in cellular telephone
18 service;

19 (3) a personal communications service; or

20 (4) a network radio access line;

21 E. "commercial mobile radio service provider" means
22 a person who provides commercial mobile radio services,
23 including a person who purchases commercial mobile radio
24 service from a provider and resells that service;

25 F. "commission" means the public regulation

1 commission;

2 G. "communication service" means any service that:

3 (1) is capable of and required by law to
 4 access, connect with or interface with the enhanced 911 system
 5 by directly dialing, initializing or otherwise activating the
 6 enhanced 911 system regardless of the transmission medium or
 7 technology employed; and

8 (2) provides or enables real-time or
 9 interactive communication;

10 H. "communications service provider" means any
 11 entity that provides communication services;

12 I. "database" means information that is collected,
 13 formatted and disseminated and that is necessary for the
 14 functioning of the enhanced 911 system, including geographic
 15 information system (GIS) addressing and digital mapping
 16 information;

17 [~~H.~~] J. "department" means the taxation and revenue
 18 department;

19 [~~I.~~] K. "division" means the local government
 20 division of the department of finance and administration;

21 L. "enhanced 911 surcharge" means the monthly
 22 uniform charge assessed on each access line in the state, on
 23 each active number for a commercial mobile radio service
 24 subscriber and on the number of VoIP lines for which the VoIP
 25 service provider enables the capacity for simultaneous calls,

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1 regardless of actual usage, to be connected to the public
2 switched telephone network during the period for which the
3 fixed charge is imposed for a VoIP service subscriber in New
4 Mexico and the charge assessed on any other consumer purchase
5 of communication service provided by a communications service
6 provider that enables communication between a person needing
7 assistance and a public safety answering point call-taker by
8 dialing 9-1-1 or its equivalent; provided that an enhanced 911
9 surcharge shall not be assessed on the provision of broadband
10 internet access service;

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

20 (1) selectively route incoming 911 ~~[calls]~~
21 communications to the appropriate public safety answering point
22 operating in a 911 service area;

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

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1 (3) provide one or more access paths for
 2 communications between users at different geographic locations
 3 through a network system that may be designed for voice, text
 4 or data, [~~or both~~] or any combination of these, and may feature
 5 limited or open access and may employ appropriate analog,
 6 digital switching or transmission technologies; [~~and~~]

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

12 (5) manage or administer the functions listed
 13 in Paragraphs (1) through (4) of this subsection;

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

24 [~~L.~~] O. "equipment supplier" means a person who
 25 provides or offers to provide [~~telecommunications~~] 22

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1 communications equipment necessary for the establishment of
2 enhanced 911 services, systems or equipment;

3 P. "ESInet" means emergency services internet
4 protocol network, an internet-protocol-based, multipurpose
5 inter-network supporting local, regional, state and national
6 public safety communications services in addition to 911;

7 ~~[M.]~~ Q. "fiscal agent" means the local governing
8 body that administers grants from the fund for a given locality
9 or region by agreement;

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

11 ~~[O.]~~ S. "local governing body" means the board of
12 county commissioners of a county or the governing body of a
13 municipality as defined in the Municipal Code;

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

17 (1) provides standardized interfaces from call
18 and message services;

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

21 (3) acquires and integrates additional data
22 useful to call routing and handling;

23 (4) delivers the calls, messages and data to
24 appropriate public safety answering points and other
25 appropriate emergency entities;

1 (5) supports data and communications needs for
 2 coordinated incident response and management; and

3 (6) provides a secure environment for
 4 emergency communications;

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

15 [Q.] V. "public safety answering point" means a
 16 twenty-four-hour local communications facility that receives
 17 911 service [~~calls~~] communications and directly dispatches
 18 emergency response services or that relays [~~calls~~]
 19 communications to the appropriate public or private safety
 20 agency;

21 [R.] W. "subscriber" means a person who [~~is a~~
 22 ~~retail purchaser of telecommunications~~] purchases communication
 23 services at retail from a communications service provider that
 24 are capable of originating a 911 [~~call~~] communication;

25 [S.] X. "surcharge" means the 911 emergency

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1 surcharge;

2 Y. "surcharge collected" means the amount of
3 enhanced 911 surcharge billed or received or deemed to have
4 been received by the seller or provider, consistent with the
5 seller's or provider's method of accounting, including accrual
6 or cash;

7 ~~[F.]~~ Z. "telecommunications company" means a person
8 who provides wire telecommunications services that are capable
9 of originating a 911 ~~[call]~~ communication; ~~[and~~

10 ~~[H.]~~ AA. "vendor" means a person that provides 911
11 equipment, service or ~~[network]~~ system support;

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

15 CC. "VoIP service provider" or "interconnected
16 voice-over-internet protocol service provider" means an entity
17 that provides interconnected voice-over-internet protocol
18 service to end users."

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

21 "63-9D-5. IMPOSITION OF SURCHARGE.--

22 A. There is imposed a 911 emergency surcharge in
23 the amount of fifty-one cents (\$.51) to be billed to each
24 subscriber access line by a ~~[telecommunications company and]~~
25 communications service provider, on each active number for a

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1 commercial mobile radio service subscriber [~~whose billing~~
 2 ~~address~~] and on the number of VoIP lines for which the VoIP
 3 service provided enables the capacity for simultaneous calls,
 4 regardless of actual usage, to be connected to the public
 5 switched telephone. The surcharge is imposed on all
 6 subscribers whose place of primary use, as defined in the
 7 federal Mobile Telecommunications Sourcing Act, is in New
 8 Mexico; provided, however, that the surcharge shall not be
 9 imposed upon subscribers receiving reduced rates pursuant to
 10 the Low Income Telephone Service Assistance Act; and provided
 11 further that the surcharge shall not apply to prepaid wireless
 12 communication service; and provided further that a 911
 13 emergency surcharge shall not be assessed on the provision of
 14 broadband internet access service.

15 B. [~~Commercial mobile radio~~] All communications
 16 service providers shall be required to bill and collect the
 17 surcharge from their subscribers whose places of primary use,
 18 as defined in the federal Mobile Telecommunications Sourcing
 19 Act, are in New Mexico. [~~Telecommunications companies shall be~~
 20 ~~required to bill and collect the surcharge from their~~
 21 ~~subscribers.~~] The surcharge required to be collected by the
 22 [~~commercial mobile radio service provider or telecommunications~~
 23 ~~company~~] communications service provider shall be added to and
 24 stated clearly and separately in the billings to the
 25 subscriber. The surcharge collected by the [~~commercial mobile~~

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1 ~~radio service provider or telecommunications company]~~
2 communications service provider shall not be considered revenue
3 of the [~~commercial mobile radio~~] communications service
4 provider [~~or telecommunications company~~].

5 C. A billed subscriber is liable for payment of the
6 911 emergency surcharge until it has been paid to the
7 [~~commercial mobile radio~~] communications service provider [~~or~~
8 ~~telecommunications company~~].

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

23 ~~[E. The surcharge shall commence with the first~~
24 ~~billing period of each subscriber on or following July 1,~~
25 ~~2005.]"~~

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

3 "63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

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

23 B. From a remittance to the department made on or
24 before the date it becomes due, a telecommunications company or
25 commercial mobile radio service provider required to make a

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1 remittance shall be entitled to deduct and retain one percent
2 of the collected amount or fifty dollars (\$50.00), whichever is
3 greater, as the administrative cost for collecting the
4 surcharge."

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

7 "63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--
8 DISBURSEMENT--REPORTS TO LEGISLATURE.--

9 A. There is created in the state treasury a fund
10 that shall be known as the "enhanced 911 fund". The fund shall
11 be administered by the division.

12 B. All surcharges collected and remitted to the
13 department shall be deposited in the fund.

14 C. Money deposited in the fund and income earned by
15 investment of the fund are appropriated for expenditure in
16 accordance with the Enhanced 911 Act and shall not revert to
17 the general fund.

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

25 A person who purchases [~~commercial mobile radio services or~~

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1 ~~telecommunications]~~ communication services from a [~~commercial~~
2 ~~mobile radio]~~ communications service provider [~~or~~
3 ~~telecommunications company]~~ for the purpose of reselling that
4 service is not eligible for reimbursement from the fund. Money
5 in the fund may be used for the payment of bonds issued
6 pursuant to the Enhanced 911 Bond Act.

7 E. Annually, the division may expend no more than
8 five percent of all money deposited annually in the fund for
9 administering and coordinating activities associated with
10 implementation of the Enhanced 911 Act.

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

21 G. After requesting enhanced 911 service from a
22 [~~telecommunications company or commercial mobile radio]~~
23 communications service provider, a local governing body may, by
24 ordinance or resolution, recover from the fund an amount
25 necessary to recover the costs of providing the enhanced 911

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1 system in its designated 911 service area. The division, on
2 behalf of local governing bodies, shall directly pay or
3 reimburse [~~commercial mobile radio~~] communications service
4 providers [~~and telecommunications companies~~] for their costs of
5 providing enhanced 911 service. If a [~~commercial mobile radio~~]
6 communications service provider [~~or telecommunications company~~]
7 does not receive payment or reimbursement for the costs of
8 providing enhanced 911 service, the provider is not obligated
9 to provide that service.

10 H. The division shall report to the legislature
11 each session the status of the fund and whether the current
12 level of the 911 emergency surcharge is sufficient, excessive
13 or insufficient to fund the anticipated needs for the next
14 year."

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

17 "63-9D-8.1. DIVISION POWERS.--

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

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

22 C. Division powers are limited and do not include
23 power to intervene between two vendors or restrict marketing
24 efforts of vendors.

25 D. The division and the local governing body may

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1 establish 911 service areas.

2 E. Unless otherwise provided by law, no rule
 3 affecting any person, agency, local governing body [~~commercial~~
 4 ~~mobile radio~~] or communications service provider [~~or~~
 5 ~~telecommunications company~~] shall be adopted, amended or
 6 repealed without a public hearing on the proposed action before
 7 the director of the division or a hearing officer designated by
 8 the director. The public hearing shall be held in Santa Fe
 9 unless otherwise permitted by statute. Notice of the subject
 10 matter of the rule, the action proposed to be taken, the time
 11 and place of the hearing, the manner in which interested
 12 persons may present their views and the method by which copies
 13 of the proposed rule or proposed amendment or repeal of an
 14 existing rule may be obtained shall be published once at least
 15 thirty days prior to the hearing in a newspaper of general
 16 circulation and mailed at least thirty days prior to the
 17 hearing date to all persons or agencies who have made a written
 18 request for advance notice of the hearing and to all local
 19 governing bodies [~~telecommunications companies and commercial~~
 20 ~~mobile radio~~] and communications service providers.

21 F. All rules shall be filed in accordance with the
 22 State Rules Act."

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

25 "63-9D-10. IMMUNITY.--Enhanced 911 systems are within the

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1 governmental powers and authorities of the local governing body
2 or state agency in the provision of services for the public
3 health, welfare and safety. In contracting for such services
4 or the provisioning of an enhanced 911 system, except for
5 ~~[willful or wanton negligence or]~~ intentional acts, the local
6 governing body, public agency, equipment supplier,
7 ~~[telecommunications company, commercial mobile radio]~~
8 communications service provider and their officers, directors,
9 vendors, employees and agents are not liable for damages
10 resulting from installing, maintaining or providing enhanced
11 911 systems or transmitting 911 calls."

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

14 "63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

15 A. Private listing subscribers waive the privacy
16 afforded by nonlisted or nonpublished numbers only to the
17 extent that the name and address associated with the telephone
18 number may be furnished to the enhanced 911 system for call
19 routing or for automatic retrieval of location information in
20 response to a call initiated to 911.

21 B. Information regarding the identity of private
22 listing subscribers provided by a communications service
23 provider, including names, addresses, telephone numbers or
24 other identifying information, is not a public record and is
25 not available for inspection.

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1 C. Proprietary information provided by a
 2 [~~commercial mobile radio~~] communications service provider [~~or~~
 3 ~~telecommunications company~~] is not public information and may
 4 not be released to any person without the express permission of
 5 the submitting provider, except that information may be
 6 released or published as aggregated data that does not identify
 7 the number of subscribers or identify enhanced 911 system costs
 8 attributable to an individual [~~commercial mobile radio~~]
 9 communications service provider [~~or telecommunications~~
 10 ~~company~~]."

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

13 "63-9D-11.1. VIOLATION--PENALTIES.--

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

21 B. A municipality or a county may adopt an
 22 ordinance making it a violation for any person to knowingly
 23 dial 911 for the purpose of reporting a false alarm, making a
 24 false complaint or reporting false information that results in
 25 an emergency response by any public safety agency. The

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1 municipality may adopt and enforce the ordinance pursuant to
2 the authority provided in Section 3-17-1 NMSA 1978. The county
3 may adopt and enforce the ordinance pursuant to the authority
4 provided in Section 4-37-1 NMSA 1978."

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

7 "63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE--PLEDGE
8 OF REVENUES--LIMITATION ON ISSUANCE.--

9 A. In addition to any other law authorizing the
10 board to issue revenue bonds, the board may issue enhanced 911
11 bonds pursuant to the Enhanced 911 Bond Act for the purposes
12 specified in this section.

13 B. Enhanced 911 bonds may be issued for:

14 (1) acquiring, extending, enlarging,
15 bettering, repairing, improving, constructing, purchasing,
16 furnishing, equipping or rehabilitating the enhanced 911
17 system, the payment of which shall be secured by enhanced 911
18 revenues;

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

23 (3) reimbursing a local governing body or its
24 fiscal agent for its reasonable costs of providing the enhanced
25 911 system, the payment of which shall be secured by enhanced

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1 911 revenues.

2 C. The board may pledge irrevocably enhanced 911
3 revenues in the manner set forth in Subsection B of this
4 section to the payment of the interest on and principal of
5 enhanced 911 bonds. Any general determination by the board
6 that expenditures are reasonably related to and constitute a
7 part of a specified enhanced 911 project shall be conclusive if
8 set forth in the proceedings authorizing the enhanced 911
9 bonds."

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

12 "[NEW MATERIAL] PREPAID WIRELESS ENHANCED 911 SURCHARGE--
13 COLLECTION AND ADMINISTRATION OF SURCHARGE--LIABILITY OF
14 SELLERS--EXCLUSIVITY OF SURCHARGE.--

15 A. As used in this section:

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

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

23 (3) "prepaid wireless enhanced 911 surcharge"
24 means the charge that is required to be collected by a seller
25 from a consumer in the amount established under Subsection B of

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1 this section;

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

5 (5) "retail transaction" means the purchase of
6 prepaid wireless communication service from a seller for any
7 purpose other than resale;

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

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

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

22 C. For purposes of Subsection B of this section, a
23 retail transaction that is effected in person by a consumer at
24 a business location of the seller shall be treated as occurring
25 in this state if that business location is in this state, and

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1 any other retail transaction shall be treated as occurring in
2 this state if the retail transaction is treated as occurring in
3 this state for purposes of the Gross Receipts and Compensating
4 Tax Act.

5 D. The prepaid wireless enhanced 911 surcharge is
6 the liability of the consumer and not of the seller or of any
7 provider, except that the seller shall be liable to remit all
8 prepaid wireless enhanced 911 surcharges that the seller
9 collects from consumers as provided in this section, including
10 all such surcharges that the seller is deemed to collect where
11 the amount of the surcharge has not been separately stated on
12 an invoice, receipt or other similar document provided to the
13 consumer by the seller.

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

22 F. When prepaid wireless communication service is
23 sold with one or more other products or services for a single,
24 non-itemized price, the percentage specified in Subsection B of
25 this section shall apply to the entire non-itemized price

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1 unless the seller elects to apply such percentage to:

2 (1) if the amount of the prepaid wireless
3 communication service is disclosed to the consumer as a dollar
4 amount, such dollar amount; or

5 (2) if the seller can identify the portion of
6 the price that is attributable to the prepaid wireless
7 communication service by reasonable and verifiable standards
8 from its books and records that are kept in the regular course
9 of business for other purposes, including non-tax purposes,
10 such portion.

11 G. If a minimal amount of prepaid wireless
12 communication service is sold with a prepaid wireless device
13 for a single, non-itemized price, the seller may elect not to
14 apply the percentage specified in Subsection B of this section
15 to such transaction. For purposes of this subsection, an
16 amount of service denominated as ten minutes or less, or five
17 dollars (\$5.00) or less, is minimal.

18 H. Prepaid wireless enhanced 911 surcharges
19 collected by sellers shall be remitted to the department at the
20 times and in the manner provided with respect to the Gross
21 Receipts and Compensating Tax Act. The department shall
22 establish registration and payment procedures that
23 substantially coincide with the registration and payment
24 procedures that apply to the Gross Receipts and Compensating
25 Tax Act. A seller shall be permitted to deduct and retain

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1 three percent of prepaid wireless enhanced 911 surcharges that
2 are collected by the seller from the consumer.

3 I. The audit and appeal procedures applicable to
4 the Gross Receipts and Compensating Tax Act shall apply to
5 prepaid wireless enhanced 911 surcharges.

6 J. The department shall establish procedures by
7 which a seller of prepaid wireless communication services may
8 document that a sale is not a retail transaction, which
9 procedures shall substantially coincide with the procedures for
10 documenting sale for resale transactions for the Gross Receipts
11 and Compensating Tax Act.

12 K. No provider or seller of prepaid wireless
13 communication services shall be liable for damages to any
14 person resulting from or incurred in connection with the
15 provision of, or failure to provide, 911 or enhanced 911
16 service, or for identifying, or failing to identify, the
17 telephone number, address, location or name associated with any
18 person or device that is accessing or attempting to access 911
19 or enhanced 911 service.

20 L. No provider or seller of prepaid wireless
21 communication services shall be liable for damages to any
22 person resulting from or incurred in connection with the
23 provision of any assistance to any investigative or law
24 enforcement officer of the United States, this or any other
25 state, or any political subdivision of this or any other state,

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1 in connection with any investigation or other law enforcement
2 activity by such law enforcement officer.

3 M. In addition to the protection from liability
4 provided by Subsections K and L of this section, each provider
5 and seller shall be entitled to the further protection from
6 liability as provided pursuant to Section 63-9D-10 NMSA 1978.

7 N. The prepaid wireless enhanced 911 surcharge
8 applies to retail transactions occurring on or after July 1,
9 2017."

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