

1 SB317
2 128300-1
3 By Senator Marsh
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 31-MAR-11

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8 SYNOPSIS: This bill would impose a uniform, statewide
9 prepaid wireless 911 charge on the retail sale of
10 prepaid wireless telecommunication services to
11 consumers, preclude the application of other state
12 and local 911 or E911 charges to the services, and
13 make conforming changes. This bill will be
14 implemented only if the Supreme Court of Alabama
15 affirms the decision of the Circuit Court in Case
16 Number: 1100107-, T-Mobile South LLC, et al. v.
17 Leslie Bonet, et al., on appeal from the Circuit
18 Court of Madison County, Alabama, Civil Action No:
19 CV-2008-900128.

20
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 To add Chapter 98A to Title 11 of the Code of
26 Alabama 1975, relating to prepaid wireless communication

1 service, to further provide for a prepaid wireless emergency
2 communication (911) charge under certain conditions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Chapter 98A is added to Title 11, Code of
5 Alabama 1975, to read as follows:

6 §11-98A-1.

7 This chapter may be cited as the Prepaid Wireless
8 911 Charge Act of 2011.

9 §11-98A-2.

10 When used in this chapter, the following terms have
11 the following meanings:

12 (1) CONSUMER. A person who purchases prepaid
13 wireless telecommunications service in a retail transaction.

14 (2) DEPARTMENT. The Department of Revenue for the
15 State of Alabama.

16 (3) PREPAID WIRELESS 911 CHARGE. The charge that is
17 required to be collected by a seller from a consumer in the
18 amount established under Section 11-98A-4.

19 (4) PREPAID WIRELESS TELECOMMUNICATIONS SERVICE. A
20 wireless telecommunications service that allows a caller to
21 dial 911 to access the 911 system, which service must be paid
22 for in advance and is sold in predetermined units or dollars
23 of which the number declines with use in an known amount.

24 (5) PROVIDER. A person that provides prepaid
25 wireless telecommunications service pursuant to a license
26 issued by the Federal Communications Commission.

1 (6) RETAIL TRANSACTION. The purchase of prepaid
2 wireless telecommunications service from a seller for any
3 purpose other than resale.

4 (7) SELLER. A person who sells prepaid wireless
5 telecommunications service to another person.

6 (8) WIRELESS TELECOMMUNICATIONS SERVICE. Commercial
7 mobile radio service as defined by Section 20.3 of Title 47 of
8 the Code of Federal Regulations, as amended.

9 §11-98A-3.

10 This chapter establishes a prepaid wireless 911
11 charge to be implemented only if the Supreme Court of Alabama
12 affirms the decision of the circuit court in Case Number:
13 1100107-, T-Mobile South LLC, et al. v. Leslie Bonet, et al.,
14 on appeal from the Circuit Court of Madison County, Alabama,
15 Civil Action No: CV-2008-900128. If the Supreme Court affirms
16 the decision, the remainder of this chapter shall be
17 implemented on the first day of the first month 150 days after
18 the Supreme Court's final disposition of the case.

19 §11-98A-4.

20 (a) There is hereby imposed a prepaid wireless 911
21 charge on each retail transaction at the rate specified in
22 Section 11-98-7(b)(1).

23 (b) The prepaid wireless 911 charge shall be
24 collected by the seller from the consumer with respect to each
25 retail transaction occurring in this state. The amount of the
26 prepaid wireless 911 charge shall be either separately stated
27 on an invoice, receipt, or other similar document that is

1 provided to the consumer by the seller, or otherwise disclosed
2 to the consumer.

3 (c) For purposes of subsection (b), a retail
4 transaction that is effected in person by a consumer at a
5 business location of the seller shall be treated as occurring
6 in this state if that business location is in this state, and
7 any other retail transaction shall be treated as occurring in
8 this state if the retail transaction is treated as occurring
9 in this state for purposes of Chapter 23 of Title 40.

10 (d) The prepaid wireless 911 charge is the liability
11 of the consumer and not of the seller or of any provider,
12 except that the seller shall be liable to remit all prepaid
13 wireless 911 charges that the seller collects from consumers
14 as provided in Section 11-98A-5, including all such charges
15 that the seller is deemed to collect where the amount of the
16 charge has not been separately stated on an invoice, receipt,
17 or other similar document provided to the consumer by the
18 seller.

19 (e) The amount of the prepaid wireless 911 charge
20 that is collected by a seller from a consumer, if the amount
21 is separately stated on an invoice, receipt, or other similar
22 document provided to the consumer by the seller, shall not be
23 included in the base for measuring any tax, fee, surcharge, or
24 other charge that is imposed by this state, any political
25 subdivision of this state, or any intergovernmental agency.

26 (f) The prepaid wireless 911 charge shall be
27 increased or decreased, as applicable, upon any change to the

1 rate specified in Section 11-98-7(b) (1). The increase or
2 decrease shall be effective on the effective date of the
3 change to the postpaid charge or, if later, the first day of
4 the first calendar month to occur at least 60 days after the
5 enactment of the change to the rate specified in Section
6 11-98-7(b) (1). The department shall provide not less than 30
7 days of advance notice of such increase or decrease on the
8 department's website.

9 §11-98A-5.

10 (a) Prepaid wireless 911 charges collected by
11 sellers shall be remitted to the department at the times and
12 in the manner provided by Chapter 23 of Title 40. The
13 department shall establish registration and payment procedures
14 that substantially coincide with the registration and payment
15 procedures that apply to Chapter 23 of Title 40.

16 (b) A seller shall be permitted to deduct and retain
17 four percent of prepaid wireless 911 charges that are
18 collected by the seller from consumers.

19 (c) The audit and appeal procedures applicable to
20 Chapter 23 of Title 40 shall apply to prepaid wireless 911
21 charges.

22 (d) The department shall establish procedures by
23 which a seller of prepaid wireless telecommunications service
24 may document that a sale is not a retail transaction, which
25 procedures shall substantially coincide with the procedures
26 for documenting sales for resale transactions for sales and
27 use tax purposes under Chapter 23 of Title 40.

1 (e) The department shall pay all remitted prepaid
2 wireless 911 charges over the Commercial Mobile Radio Services
3 Board within 30 days of receipt, for use by the board in
4 accordance with the purposes permitted by Section 11-98-7,
5 after deducting an amount, not to exceed two percent of
6 collected charges, that shall be retained by the department to
7 reimburse its direct costs of administering the collection and
8 remittance of prepaid wireless 911 charges.

9 §11-98A-6.

10 (a) No provider or seller of prepaid wireless
11 telecommunications service shall be liable for damages to any
12 person resulting from or incurred in connection with the
13 provision of, or failure to provide, 911 or E911 service, or
14 for identifying, or failing to identify, the telephone number,
15 address, location, or name associated with any person or
16 device that is accessing or attempting to access 911 or E911
17 service.

18 (b) No provider or seller of prepaid wireless
19 telecommunications service shall be liable for damages to any
20 person resulting from or incurred in connection with the
21 provision of any lawful assistance to any investigative or law
22 enforcement officer of the United States, this or any other
23 state, or any political subdivision of this or any other
24 state, in connection with any lawful investigation or other
25 law enforcement activity by such law enforcement officer.

26 §11-98A-7.

1 The prepaid wireless 911 charge imposed by this
2 chapter shall be the only 911 funding obligation imposed with
3 respect to prepaid wireless telecommunications service in this
4 state, and no tax, fee, surcharge, or other charge shall be
5 imposed by this state, any political subdivision of this
6 state, or any intergovernmental agency, for 911 funding
7 purposes, upon any provider, seller, or consumer with respect
8 to the sale, purchase, use, or provision of prepaid wireless
9 telecommunications service.

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.