

**HOUSE . . . . . No. 00643**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Michael A. Costello*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing a prepaid wireless E911 surcharge.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael A. Costello</i>	<i>1st Essex</i>
<i>David M. Torrisi</i>	<i>14th Essex</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Edward Coppinger</i>	<i>10th Suffolk</i>

# HOUSE . . . . . No. 00643

By Mr. Michael A. Costello of Newburyport, petition (accompanied by bill, House, No. 00643) of Edward Coppinger and others relative to establishing a prepaid wireless enhanced 911 surcharge. Joint Committee on Public Safety and Homeland Security.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing a prepaid wireless E911 surcharge.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 18 of chapter 6A, as most recently amended by Chapter 223 of the Laws  
2 of 2008, is hereby further amended by striking out section 18A, as so appearing, and inserting in  
3 place thereof the following section:-

4 Section 18A. In this section, and in sections 18B to 18J, inclusive, of this chapter, and in section  
5 14A of chapter 166, the following words shall, unless the context clearly requires otherwise,  
6 have the following meanings:

7 “Automatic location identification”, an enhanced 911 service capability that allows for the  
8 automatic display of information relating to the geographical location of the communication  
9 device used to place a 911 call.

10 “Automatic number identification”, an enhanced 911 service capability that allows for the  
11 automatic display of a telephone number used to place or route a 911 call.

12 “Commission”, the state 911 commission.

13 “Communication services”, includes any of the following: (a) the transmission, conveyance or  
14 routing of real-time, two-way voice communications to a point or between or among points by or  
15 through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless or other  
16 medium or method, regardless of the protocol used; (b) the ability to provide two-way voice  
17 communication on the public switched network; (c) wireless enhanced 911 service; (d) wireline  
18 enhanced 911 service; (e) interconnected VoIP provider service as defined by the regulations of  
19 the FCC regulations; (f) IP -enabled service; or (g) prepaid wireless service.

20 “Communication service provider”, an entity that provides communication services to a  
21 subscriber.

22 ”Consumer”, a person who purchases prepaid wireless telecommunications service in a retail  
23 transaction.

24 “Department”, the state 911 department.

25 “Director”, the executive director of the state 911 department.

26 “Emergency medical dispatch”, the management of requests for emergency medical assistance  
27 by utilizing a system of: (a) tiered response or priority dispatching of emergency medical  
28 resources based on the level of medical assistance needed by the victim; and (b) pre-arrival first  
29 aid or other medical instructions given by trained personnel responsible for receiving 911 calls  
30 and directly dispatching emergency response services.

31 “Enhanced 911 Fund”, the fund established under section 35JJ of chapter 10.

32 “Enhanced 911 service provider”, any entity that provides 1 or more of the following 911  
33 elements: network, database or PSAP customer premises equipment.

34 “Enhanced 911 service”, a service consisting of communication network, database and  
35 equipment features provided for subscribers of communication services enabling such  
36 subscribers or consumers of prepaid wireless telecommunications service to reach a PSAP by  
37 dialing the digits 911, or by other means approved by the department, that directs calls to  
38 appropriate PSAPs based on selective routing and provides the capability for automatic number  
39 identification and automatic location identification.

40 “Enhanced 911 network features”, the components of enhanced 911 service that provide  
41 selective routing, automatic number identification and automatic location identification.

42 “Enhanced 911 systems”, a distinct entity or geographical segment in which enhanced 911  
43 service is provided, consisting of network routing elements serving as a control office and  
44 trunking connecting all central offices within a geographical segment, and including PSAPs and  
45 network used to deliver location data to PSAPs from a data base.

46 “FCC”, the Federal Communications Commission.

47 “FCC order”, all orders issued by the FCC under the proceeding entitled “Revision of the  
48 Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems”  
49 (CC Docket No. 94-102; RM 8143), or any successor proceeding, including all other criteria  
50 established therein, regarding the delivery of wireless enhanced 911 service by a wireless carrier,  
51 and all orders issued by the FCC under the proceeding entitled “In the Matter of IP-Enabled  
52 Services; E911 Requirements for IP-Enabled Service Providers”(WC Docket No 05-196), or any

53 successor proceeding, including all other criteria established therein, regarding the delivery of  
54 enhanced 911 service by an IP-enabled service provider.

55 “Governmental body” shall include any governmental body as defined in section 11A of chapter  
56 30A or section 23A of chapter 39.

57 “Interconnected VoIP service”, voice over the internet protocol services as defined by the FCC  
58 in 47 CFR 9.3.

59 “IP-enabled service”, a service, device or application which makes use of Internet Protocol, or  
60 IP, and capable of entering the digits 911, or by other means as approved by the department, for  
61 the purposes of interconnecting users to the enhanced 911 system including, but not limited to,  
62 voice over IP and other services, devices, or applications provided through or using wireline,  
63 cable, wireless, or satellite facilities or any other facility that may be provided in the future

64 .“Limited secondary PSAP”, a PSAP equipped, at a minimum, with automatic number  
65 identification and automatic location identification display or printout capability. It receives 911  
66 calls only if transferred from the primary PSAP. Data sent to a limited secondary PSAP cannot  
67 be re-routed to another location and may not necessarily be transmitted simultaneously with the  
68 voice call.

69 “Local exchange service”, telephone exchange lines or channels that provide local access from  
70 the premises of a subscriber in the commonwealth to the local telecommunications network to  
71 effect the transfer of information.

72 “Network components”, any software or hardware for a control switch, other switch  
73 modification, trunking or any components of a computer storage system or database used for

74 selective routing of 911 calls, automatic number identification and automatic location  
75 identification, including a PSAP.

76 “Next generation 911”, an enhanced 911 system that incorporates the handling of all 911 calls  
77 and messages, including those using IP-enabled services or other advanced communications  
78 technologies in the infrastructure of the 911 system itself.

79 “Prepaid wireless telecommunications service”, a commercial mobile radio service as defined by  
80 section 20.3 of title 47 of the Code of Federal Regulations, as amended, that allows a caller to  
81 dial 911 to access the 911 system, which service must be paid for in advance and is sold in  
82 predetermined units or dollars of which the number declines with use in a known amount. Such  
83 predetermined units may be measured in units of time, not to exceed one month.

84 “Prepaid wireless telecommunications service provider”, a person that provides prepaid wireless  
85 telecommunications service pursuant to a license issued by the Federal Communications  
86 Commission.

87 “PSAP customer premises equipment”, enhanced 911 call processing equipment located at a  
88 PSAP.

89 “Primary PSAP”, a PSAP equipped with automatic number identification and automatic location  
90 identification displays, and is the first point of reception of a 911 call. It serves the municipality  
91 in which it is located.

92 “Private safety department”, an entity, except for a municipality or a public safety department,  
93 that provides emergency police, fire, ambulance or medical services.

94 “Public safety answering point” or “PSAP”, a facility assigned the responsibility of receiving  
95 911 calls and, as appropriate, directly dispatching emergency response services or transferring or  
96 relaying emergency 911 calls to other public or private safety agencies or other PSAPs.

97 “Public safety department”, a functional division of a municipality or a state that provides fire  
98 fighting, law enforcement, ambulance, medical or other emergency services.

99 “Regional emergency communication center”, a facility operated by or on behalf of 2 or more  
100 municipalities or governmental bodies, or combination thereof, as approved by the department,  
101 that enter into an agreement for the establishment and provision of regional dispatch and  
102 coordination of emergency services for all such municipalities or governmental bodies including,  
103 but not limited to, a regional PSAP that provides enhanced 911 service and police, fire  
104 protection, and emergency medical services dispatch, including services provided by a private  
105 safety department. The regional PSAP portion of the center shall be equipped with automatic  
106 number identification and automatic location identification displays, as approved by the  
107 department, and is the first point of reception of a 911 call.

108 “Regional PSAP”, a PSAP operated by or on behalf of 2 or more municipalities or governmental  
109 bodies, or combination thereof, approved by the department, for the operation of enhanced 911  
110 call taking and call transfer activities. A regional PSAP may also be engaged in, by agreement,  
111 the dispatching or control of public safety resources serving some or all of the municipalities or  
112 governmental bodies that comprise the regional PSAP, including where services are provided by  
113 a private safety department. If the regional PSAP serves all such municipalities or governmental  
114 bodies for the operation of enhanced 911 call taking and call transfer activities and dispatch  
115 services including where dispatch services are provided by a private safety department, it shall

116 be considered a regional emergency communication center for the purposes of section 18B. The  
117 regional PSAP shall be equipped with automatic number identification and automatic location  
118 identification displays, as approved by the department, and is the first point of reception of a 911  
119 call.

120 “Regional secondary PSAP”, a facility operated by or on behalf of 3 or more municipalities or  
121 governmental bodies, or a combination thereof, approved by the department, that enter into an  
122 agreement for the establishment and provision of regional dispatch and coordination of either  
123 police, fire protection or emergency medical services, or any combination thereof. A regional  
124 secondary PSAP is equipped with automatic number identification and automatic location  
125 identification displays. It receives 911 calls only when transferred from a primary or regional  
126 PSAP or on an alternative routing basis when calls cannot be completed to the primary or  
127 regional PSAP.

128 “Retail transaction”, the purchase of prepaid wireless telecommunications service from a seller  
129 for any purpose other than resale.

130 “Ringling PSAP”, a PSAP equipped for receipt of voice communications only, and may not  
131 operate 24 hours each day. It receives 911 calls that are transferred from the primary PSAP.

132 “Secondary PSAP”, a PSAP equipped with automatic number identification and automatic  
133 location identification displays. It receives 911 calls only when they are transferred from the  
134 primary PSAP or on an alternative routing basis when calls cannot be completed to the primary  
135 PSAP.

136 “Selective routing”, the method to direct 911 calls to the appropriate PSAP using a call routing  
137 database derived from the geographical location from which the call originated.



138 "Seller", a person who sells prepaid wireless telecommunications service to another person.

139 "Subscriber", a person who uses communication services; provided, however, that such term

140 does not include a consumer of prepaid wireless telecommunications service.

141 "Telephone company", a person, firm, corporation, association or joint stock association or

142 company, as defined in chapter 159 , furnishing or rendering local telephone exchange service.

143 "VoIP or voice over internet protocol", a type of IP-enabled service that allows for the two-way

144 real time transmission of voice communications and has access to the public switched network.

145 "Wholesale", sales by the prepaid wireless telephone service provider to a non-prepaid wireless

146 telephone service provider that sells service on behalf of the prepaid wireless telephone service

147 provider.

148 "Wireless carrier", a commercial mobile radio service, as defined in 47 U S C 332(d), including

149 resellers and prepaid wireless telecommunications service providers.

150 "Wireless enhanced 911 service", the service required to be provided by wireless carriers under,

151 and governed by, FCC order.

152 "Wireless state police PSAP", a state police facility assigned the responsibility of primarily or

153 entirely receiving wireless 911 calls and, as appropriate, directly dispatching emergency

154 response services or transferring or relaying emergency 911 calls to other public or private safety

155 departments or other PSAPs.

156 "Wireline carrier", an incumbent local exchange carrier or local exchange carrier operating in the

157 commonwealth, or a telephone company, or any other person, corporation or entity that provides

158 local exchange service.

159 “Wireline enhanced 911 service”, service provided by a wireline carrier that connects a  
160 subscriber dialing or entering the digits 911 to a PSAP.

161 SECTION 2. Said chapter 6A is hereby further amended by striking out section 18H, as so  
162 appearing, and inserting in place thereof the following section:-

163 Section 18H. (a1) There shall be imposed on each subscriber whose communication services  
164 are capable of accessing and utilizing an enhanced 911 system, a surcharge in the amount of 75  
165 cents per month for expenses associated with services provided under sections 18A to 18J,  
166 inclusive, and sections 14A and 15E of chapter 166. For wireline enhanced 911 service, the  
167 charge shall be imposed on each voice grade exchange telephone line of business and residence  
168 customers within the commonwealth, but the surcharge applicable to centrex service and ISDN  
169 primary rate interface service shall be based on an equivalency ratio provided to each private  
170 branch exchange trunk. For wireless enhanced 911 service, the charge shall be imposed on the  
171 subscriber per their place of primary use as required pursuant to the Mobile Telecommunications  
172 Sourcing Act, Title 4 of US Code section 116 to 124. For interconnected VoIP provider service,  
173 the charge shall be imposed on each voice grade telephone line of business and residence  
174 customers within the commonwealth, but the surcharge applicable to such interconnected VoIP  
175 provider service that is comparable to centrex service and ISDN primary rate interface service  
176 associated with wireline enhanced 911 service shall be based on an equivalency ratio similar to  
177 that used for wireline enhanced 911 service. For IP-enabled service, the charge shall be imposed  
178 based on the subscriber’s billing address in the commonwealth except for interconnected VoIP  
179 provider service, unless a different method is approved by the department.

180 The surcharge shall be collected by the communication service provider and shall be shown on  
181 the subscriber's bill as "Disability Access/Enhanced 911 Service Surcharge", or an appropriate  
182 abbreviation. The surcharge shall not be subject to sales or use tax. The subscriber shall be  
183 liable for the surcharge imposed under this section, and the communication service provider shall  
184 not be financially liable for surcharges billed on behalf of the commonwealth but not collected  
185 from subscribers. Partial subscriber payments shall be first applied to outstanding  
186 communication service provider charges.

187 (a2) 1. There shall be imposed a prepaid wireless E911 surcharge. The prepaid wireless E911  
188 surcharge shall be 75 cents per retail transaction or, on and after the effective date of an adjusted  
189 amount per retail transaction that is established under paragraph 6 of this subsection, such  
190 adjusted amount.

191 2. The prepaid wireless E911 surcharge shall be collected by the seller from the consumer with  
192 respect to each retail transaction occurring in this state. The amount of the prepaid wireless  
193 E911 surcharge shall be either separately stated on an invoice, receipt, or similar document that  
194 is provided to the consumer by the seller, or otherwise disclosed to the consumer.

195 3. For purposes of paragraph 2 of this subsection, a retail transaction that is effected in person by  
196 a consumer at a business location of the seller shall be treated as occurring in this state if that  
197 business location is in this state, and any other retail transaction shall be treated as occurring in  
198 this state if the retail transaction is treated as occurring in this state under Section 1 of Chapter  
199 64H of Title IX of the General Laws.

200 4. The prepaid wireless E911 charge is the liability of the consumer and not of the seller or of  
201 any prepaid wireless telecommunications service provider, except that the seller shall be liable to

202 remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in  
203 this subsection, including all such charges that the seller is deemed to collect where the amount  
204 of the charge has not been separately stated on an invoice, receipt, or other similar document  
205 provided by the consumer to the seller.

206 5. The amount of the prepaid wireless E 911 charge that is collected by a seller from a  
207 consumer, if such amount is separately stated on an invoice, receipt, or other similar document  
208 provided to the consumer by the seller, shall not be included in the base for measuring any tax,  
209 fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state,  
210 or any intergovernmental entity.

211 6. The prepaid wireless E911 charge shall be proportionately increased or reduced, as applicable,  
212 upon any change to the surcharge imposed under subsection (a1) of this section as provided  
213 under subsection (b) of this section. Such increase or reduction shall be effective on the effective  
214 date of the change to the charge imposed under subsection (a1) or, if later, the first day of the  
215 first calendar month to occur at least 60 days after implementation of the change to the charge  
216 imposed under paragraph (a1). The Department of Revenue shall provide not less than 30 days  
217 of advance notice of such increase or reduction in its public website.

218 7. Prepaid wireless E911 surcharges collected by sellers shall be remitted to the Department of  
219 Revenue at the times and in the same manner as the tax imposed under Chapter 64H of Title IX  
220 of the General Laws. The Department of Revenue shall establish registration and payment  
221 procedures that substantially coincide with the registration and payment procedures that apply to  
222 Sections 3 and 7 of Chapter 64H of the Title IX of the General Laws.

223 8. A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911  
224 surcharges that are collected by the seller from consumers.

225 9. The audit and appeal procedures applicable under Chapter 64H of Title IX of the General  
226 Laws shall apply to prepaid wireless E911 charges.

227 10. The Department of Revenue shall establish procedures by which a seller of prepaid wireless  
228 telecommunications service may document that a sale is not a retail transaction. Such  
229 procedures shall substantially coincide with the procedures for documenting sale for resale  
230 transactions under section 8 of Chapter 64H of Title IX of the General Laws.

231 11. The Department of Revenue shall transfer all remitted prepaid wireless E911 surcharges to  
232 the state treasurer for deposit in the Enhanced 911 Fund for use as provided in this section within  
233 30 days of receipt after deducting an amount, not to exceed two percent (2%) of remitted  
234 charges, that shall be retained by the Department of Revenue to reimburse its direct costs of  
235 administering the collection and remittance of prepaid wireless E911 surcharges.

236 12. No prepaid wireless telecommunications service provider or seller shall be liable for  
237 damages to any person resulting from or incurred in connection with the provision of, or failure  
238 to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number,  
239 address, location, or name associated with any person or device that is accessing or attempting to  
240 access 911 or E911 service.

241 13. In addition to the provisions of paragraph 12 of this subsection, each prepaid wireless  
242 telecommunications provider and seller shall be covered by the liability protections of subsection  
243 (g) of this section.

244 14. The prepaid wireless E911 surcharge imposed by this subsection shall be the only E911  
245 funding obligation imposed with respect to prepaid wireless telecommunications service in this  
246 state and not tax, fee, surcharge, or other charge shall be imposed by this state, any political  
247 subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any  
248 prepaid wireless telecommunications service provider, seller, or consumer with respect to the  
249 sale, purchase, use, or provision of prepaid wireless telecommunications service.

250 (b) The department may petition the department of telecommunications and cable for an  
251 adjustment in the surcharge established in subsection (a1). The department of  
252 telecommunications and cable shall be responsible for establishing the new surcharge, and all  
253 future surcharges, upon petition of the department. The department of telecommunications and  
254 cable, at its discretion but not more than once per calendar year, may investigate the prudence of  
255 the department's revenue and expenditures for the purpose of recalculating the surcharge, and  
256 may hire experts to assist in its investigation. The reasonable cost of such experts shall be  
257 charged to the Enhanced 911 Fund, but in no event shall such cost exceed \$200,000, which may  
258 be adjusted to reflect changes in the consumer price index. The department of  
259 telecommunications and cable shall conduct its review and issue a decision within 90 days of the  
260 date of the commencement of the investigation, but the surcharge shall be deemed approved if  
261 the department of telecommunications and cable does not issue its decision within such 90 days.  
262 The department of telecommunications and cable shall adopt rules that provide for the funding of  
263 prudently incurred expenses associated with services provided by sections 18A to 18J, inclusive,  
264 and sections 14A and 15E of chapter 166, by means of the surcharge. The department shall  
265 report annually to the department of telecommunications and cable on the financial condition of  
266 the Enhanced 911 Fund and on the department's assessment of new developments affecting the

267 enhanced 911 system. The report shall be submitted to the department of telecommunications  
268 and cable within 60 days of the end of each fiscal year. The department of telecommunications  
269 and cable shall file an annual report with the clerks of the house of representatives and the senate  
270 relative to the financial condition of the Enhanced 911 F und.

271 (c) The department shall seek the approval of the department of telecommunications and cable  
272 for projected total expenditures that exceed total expenditures of the previous fiscal year by 10  
273 per cent or more. The department of telecommunications and cable may investigate the  
274 reasonableness of the expenditures and shall conduct its review and issue a decision within 90  
275 days from the date the department files its request for approval, but the request for approval shall  
276 be deemed approved if the department of telecommunications and cable does not issue its  
277 decision within such 90 days. The department of telecommunications and cable shall notify the  
278 department of its intent to investigate within 20 days of the date the department files its request  
279 for approval. The department's request for approval shall be deemed approved in the absence of  
280 the department of telecommunication and cable's notification to the department of its intent to  
281 investigate. If the department of telecommunication and cable notifies the department that it  
282 intends to investigate an expenditure, the department of telecommunications and cable may hire  
283 experts to assist in its investigation. The reasonable cost of the experts shall be charged to the  
284 Enhanced 911 F und, but in no event shall such cost exceed \$200,000, which may be adjusted to  
285 reflect changes in the consumer price index.

286 (d) Each communication service provider shall remit the surcharge revenues collected from its  
287 subscribers to the state treasurer for deposit in the Enhanced 911 F und. The surcharge revenues  
288 shall be expended for the administration and programs of the department including, but not  
289 limited to, salaries, enhanced 911 training programs, enhanced 911 public education programs,

290 the creation of PSAP customer premises equipment for, and maintenance of, primary and  
291 regional PSAPs, the programs mandated by section 18B and sections 14A and 15E of chapter  
292 166, and for the implementation and administration of enhanced 911 service in the  
293 commonwealth.

294 (e) Each communication service provider required to remit surcharge revenues shall submit to  
295 the department and the department of telecommunications and cable information on its business  
296 entity including, but not limited to, name, business address, contact person and the telephone  
297 number, fax number and e-mail address of such contact person. Each such provider shall update  
298 this information annually.

299 (f) Each communication service provider shall report to the department on a monthly basis the  
300 total surcharge revenues collected from its subscribers during the preceding month, the total  
301 uncollected surcharge revenues from subscribers during the preceding month, the total amount  
302 billed to the department for administration costs to cover the expenses of billing, collecting and  
303 remitting the surcharge during the preceding month, and the total amount billed to the  
304 department for non-recurring and recurring costs associated with any service, operation,  
305 administration or maintenance of enhanced 911 service during the preceding month. Such  
306 monthly report shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or  
307 section 10 of chapter 66.

308 (g) A communication service provider shall forward to any PSAP or any other answering point  
309 equipped for enhanced 911 service, or upon request consistent with federal law, to a municipal,  
310 state, or federal law enforcement agency, the department of telecommunications and cable, the  
311 FCC or the department, the telephone number and street address or location of any telephone



312 used to place a 911 call, and any other call data or information required by the FCC to be  
313 transmitted to a PSAP.

314 Subscriber information or data provided in accordance with this section shall be used, consistent  
315 with federal law, only for the purpose of responding to emergency calls, administering and  
316 operating the enhanced 911 system and providing enhanced 911 service, or for use in any  
317 ensuing investigation or prosecution, including the investigation of false or intentionally  
318 misleading reports of incidents requiring emergency service. No communication service provider  
319 or officers, directors, employees, vendors or agents shall be liable in any action to any person for  
320 releases of information authorized by this section or for civil action resulting from or caused by  
321 such providers for participation or omissions in the development, installation, operation,  
322 maintenance, performance or provision of enhanced 911 service except for wanton or willful  
323 misconduct. Release to or use by any person of a communication service provider's subscriber  
324 information or data for any use other than the purposes enumerated in this subsection shall be  
325 prohibited. Notwithstanding any general or special law to the contrary, such information or data  
326 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of  
327 chapter 66, except that aggregated information that does not identify or effectively identify  
328 specific subscriber information or data may be made public.

329 (h) The department shall examine call volumes of all primary, regional and regional secondary  
330 PSAPs, and the population changes of the municipalities they serve, and may use such  
331 information in determining the disbursement of funds as set forth in section 18B.

332 SECTION 3. This act shall take effect on July 1, 2012.