

AN ACT relating to 911 emergency services.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 65.7621 is amended to read as follows:

As used in KRS 65.7621 to 65.7643, unless the context requires otherwise:

- (1) "Administrator" means the state administrator of CMRS emergency telecommunications under KRS 65.7625;
- (2) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification;"
- (3) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call;
- (4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;
- (5) "CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky;
- (6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer;
- (7) "CMRS customer" means an end user to whom a mobile handset telephone number

- is assigned and to whom CMRS is provided in return for compensation;
- (8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund;
- (9) "CMRS provider" means a person or entity who provides CMRS to an end user. The term includes both facilities-based resellers and nonfacilities-based resellers;
- (10) "CMRS service charge" means the CMRS emergency telephone service charge levied under KRS 65.7629(3) and collected under KRS 65.7635;
- (11) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof;
- (12) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth;
- (13) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP;
- (14) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection;
- (15) **"Prepaid wireless service charge" means the prepaid wireless service charge imposed under Section 5 of this Act and collected under Sections 6 to 15 of this Act;**
- (16) **"Prepaid wireless telecommunications service" means a wireless telecommunications service that:**
- (a) Is paid for in advance;**
- (b) Is sold in predetermined units of time or dollars that decline with use in a known amount or provides unlimited use of the service for a fixed amount of time; and**
- (c) Allows a caller to dial 911 to access 911 emergency telephone service.**

**(17) "Prepaid wireless service provider" means a common carrier that provides prepaid wireless service to an end user;**

**(18)** "Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets;

**(19)**~~(16)~~ "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face;

**(20)**~~(17)~~ "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;

**(21) "Purchaser" means a person who purchases prepaid wireless telecommunication service in a retail transaction;**

**(22) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;**

**(23) "Seller" means a person who sells a prepaid wireless telecommunications service to any person for a purpose other than resale;**

**(24)**~~(18)~~ "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber;

**(25)**~~(19)~~ "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the end user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order; and

~~(26)~~~~(20)~~ "Tier III CMRS provider" means a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of December 31, 2001.

➔Section 2. KRS 65.7627 is amended to read as follows:

There is established the commercial mobile radio service emergency telecommunications fund, the "CMRS fund," an insured, interest-bearing account to be administered and maintained by the CMRS Board. The CMRS service charge shall have uniform application within the boundaries of the Commonwealth. No charge other than the CMRS service charge is authorized to be levied by any person or entity for providing wireless 911 service or wireless E911 service. The board shall deposit all revenues derived under KRS 65.7635 and Section 5 of this Act into the fund, and shall direct disbursements from the fund according to the provisions of KRS 65.7631. Moneys in the CMRS fund shall not be the property of the Commonwealth and shall not be subject to appropriation by the General Assembly. Moneys deposited or to be deposited into the CMRS fund shall not:

- (1) Be loaned to the Commonwealth or to any instrumentality or agency thereof;
- (2) Be subject to transfer to the Commonwealth or any agency or instrumentality thereof, except for purposes specifically authorized by KRS 65.7621 to 65.7643; or
- (3) Be expended for any purpose other than a purpose authorized by KRS 65.7621 to 65.7643.

➔Section 3. KRS 65.7629 is amended to read as follows:

The board shall administer the provisions of KRS 65.7621 to 65.7643, and shall have the following powers and duties:

- (1) To review, evaluate, and approve or disapprove the plans or plan modifications that are submitted to the board for complying with the wireless E911 service requirements established by the FCC order and by any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order;

- (2) To develop standards to be followed by the board in reviewing, evaluating, approving, or disapproving the plans or plan modifications that are submitted to the board;
- (3) To collect the CMRS service charge from each CMRS connection [:-  
(a) ~~with a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth]; or~~  
(b) ~~For prepaid CMRS connections:~~  
1. ~~With a place of primary use, as defined in 4 U.S.C. sec. 124, within the Commonwealth; or~~  
2. ~~With a geographical location associated with the first six (6) digits, or NPA/NXX, of the mobile telephone number is inside the geographic boundaries of the Commonwealth].~~

The CMRS service charge shall be seventy cents (\$0.70) per month per CMRS connection, and shall be collected in accordance with KRS 65.7635 beginning August 15, 1998. The amount of the CMRS service charge shall not be increased except by act of the General Assembly. **The CMRS service charge shall not apply to prepaid wireless telecommunications service, which shall be subject to the prepaid wireless service charge imposed under Section 5 of this Act;**

- (4) To review the rate of the CMRS service charge at least once every twenty-four (24) months and, at its discretion, to decrease the rate or recommend that the General Assembly increase the rate if the board determines that changing the rate is necessary to achieve the purposes of KRS 65.7621 to 65.7643. The first cost study shall be completed on or before July 1, 1999, and shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the board shall recommend, on the basis of the cost study, whether legislation to increase the CMRS service charge should be proposed during the 2000 Regular Session of the General Assembly;

- (5) To administer and maintain the CMRS fund according to the provisions of KRS 65.7627, and promptly to deposit all revenues from the CMRS service charge into the CMRS fund;
- (6) To make disbursements from the CMRS fund, according to the allocations and requirements established in KRS 65.7631;
- (7) To establish procedures and guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements made in accordance with KRS 65.7631;
- (8) To resolve conflicts regarding reimbursable costs and expenses under KRS 65.7631 (3) and (4);
- (9) To submit annual reports to the Auditor of Public Accounts no later than sixty (60) days after the close of each fiscal year, which shall provide an accounting for all CMRS service charges deposited into the CMRS fund during the preceding fiscal year and all disbursements to CMRS providers and PSAPs during the preceding fiscal year;
- (10) To employ consultants, engineers, and other persons and employees as may be, in the judgment of the board, essential to the board's operations, functions, and responsibilities, and to fix and pay their compensation from funds available to the CMRS board;
- (11) To acquire, by gift, purchase, installment purchase, or lease, any equipment necessary to carry out the board's purposes and duties;
- (12) To retain any and all information, including all proprietary information, that is submitted to the board by CMRS providers and PSAPs, for the purposes of maintaining it and verifying its accuracy;
- (13) To retain, with approval by the Auditor of Public Accounts, an independent certified public accountant who shall audit, once every twenty-four (24) months, the books of the board, CMRS providers, and PSAPs eligible to request or receive

disbursements from the CMRS fund under KRS 65.7631 for the following purposes:

- (a) To verify the accuracy of collection, receipts, and disbursements of all revenues derived from the CMRS service charge and the number of wireless E911 calls received by each PSAP eligible to request or receive disbursements from the CMRS fund;
- (b) To determine whether the revenues generated by the CMRS service charge and the prepaid wireless service charge equal, exceed, or are less than the costs incurred in order to comply with the FCC order; and
- (c) To determine the sufficiency of the funds currently being withheld for administrative purposes under KRS 65.7631(1).

The independent certified public accountant shall make a report of the audits to the board and to the appropriate chief executive officer or officers of the CMRS providers and PSAPs. The board shall incorporate the auditor's findings in its studies of the CMRS service charge required by subsection (4) of this section. All information with respect to the audits shall be released to the public or published only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to individual CMRS providers;

- (14) To ensure that all carriers have an equal opportunity to participate in the wireless E911 system;
- (15) To ensure that wireless E911 systems are compatible with wireline E911 systems;
- (16) To determine the appropriate method for disbursing funds to PSAP's based on wireless workload under KRS 65.7631(3)(b);
- (17) To develop standards and protocols for the improvement and increased efficiency of 911 services in Kentucky; and
- (18) To provide direct grants or state matches for federal, state, or private grants for the establishment or improvement of the 911 emergency telecommunications system in

the Commonwealth.

➔Section 4. KRS 65.7635 is amended to read as follows:

- (1) Each CMRS provider shall act as a collection agent for the CMRS fund. From its customers, the provider shall, as part of the provider's billing process, collect the CMRS service charges levied upon CMRS connections under KRS 65.7629(3) from each CMRS connection to whom the billing provider provides CMRS. Each billing provider shall list the CMRS service charge as a separate entry on each bill which includes a CMRS service charge. If a CMRS provider receives a partial payment for a monthly bill from a CMRS customer, the provider shall first apply the payment against the amount the CMRS customer owes the CMRS provider.~~For CMRS customers who purchase CMRS services on a prepaid basis, the CMRS service charge shall be determined according to one (1) of the following methodologies as elected by the CMRS provider:
  - (a) The CMRS provider shall collect, on a monthly basis, the CMRS service charge specified in KRS 65.7629(3) from each active customer whose account balance is equal to or greater than the amount of service charge; or
  - (b) The CMRS provider shall divide its total earned prepaid wireless telephone revenue received with respect to its prepaid customers in the Commonwealth within the monthly 911 emergency telephone service reporting period by fifty dollars (\$50), multiply the quotient by the service charge amount, and pay the resulting amount to the board; or
  - (c) In the case of CMRS providers that do not have the ability to access or debit end-user accounts, and do not have retail contact with the end user or purchaser of prepaid wireless airtime, the CMRS service charge and collection methodology may be determined by administrative regulations promulgated by the board to collect the service charge from such end users.]~~
  - (2) A CMRS provider has no obligation to take any legal action to enforce the



collection of the CMRS service charges for which any CMRS customer is billed. Collection actions to enforce the collection of the CMRS service charge against any CMRS customer may, however, be initiated by the state, on behalf of the board, in the Circuit Court of the county where the bill for CMRS service is regularly delivered, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

- (3) State and local taxes shall not apply to CMRS service charges.
- (4) To reimburse itself for the cost of collecting and remitting the CMRS service charge, each CMRS provider may deduct and retain from the CMRS service charges it collects during each calendar month an amount not to exceed one and one-half percent (1.5%) of the gross aggregate amount of CMRS service charges it collected that month.
- (5) All CMRS service charges imposed under KRS 65.7621 to 65.7643 collected by each CMRS provider, less the administrative fee described in subsection (4) of this section, are due and payable to the board monthly and shall be remitted on or before sixty (60) days after the end of the calendar month. Collection actions may be initiated by the state, on behalf of the board, in the Franklin Circuit Court or any other court of competent jurisdiction, and the reasonable costs and attorneys' fees which are incurred in connection with any such collection action may be awarded by the court to the prevailing party in the action.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65.7621 TO 65.7643 IS CREATED TO READ AS FOLLOWS:

- (1) (a) The prepaid wireless service charge is hereby established. The rate of the prepaid wireless service charge shall be two percent (2%) of the sales price on each retail transaction.**
- (b) The prepaid wireless service charge shall not exceed seventy cents (\$.70) per**

retail transaction.

(2) The prepaid wireless service charge shall be collected by the seller from the purchaser with respect to each retail transaction occurring in this state. The amount of the prepaid wireless service charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the purchaser by the seller, or otherwise disclosed to the purchaser.

(3) For the purposes of subsection (2) of this section, a retail transaction shall be sourced as provided in KRS 139.105.

(4) When prepaid wireless telecommunications service is sold with one (1) or more other products or services for a single, non-itemized price, then the percentage specified in subsection (1) of this section shall apply to the entire non-itemized price unless the seller elects to apply the percentage:

(a) To the dollar amount disclosed to the purchaser as the cost of the prepaid wireless telecommunications service; or

(b) To the portion of the bundled price attributable to the prepaid wireless telecommunications service, if the seller can identify the attributable portion by reasonable and verifiable standards from the seller's books and records kept in the normal course of business for other purposes, including but not limited to nontax purposes;

Except, however, that if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized price, then the seller may elect not to apply the percentage specified in paragraph (a) of this subsection to such transaction. For purposes of this paragraph, an amount of service denominated as ten (10) minutes or less, or five dollars (\$5) or less, is minimal.

(5) The prepaid wireless service charge is the liability of the purchaser and not of the seller or of any prepaid wireless service provider, except that the seller shall remit

all prepaid wireless service charges that the seller collects from purchasers pursuant to subsection (2) of this section, including all such charges that the seller is deemed to collect where the amount of the charge had not been separately stated on an invoice, receipt, or other similar document provided to the purchaser by the seller.

(6) The amount of the prepaid wireless service charge that is collected by a seller from a purchaser, if the amount is separately stated on an invoice, receipt, or other similar document provided to the purchaser by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of the state, or any intergovernmental agency.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

For the purposes of Sections 6 to 16 of this Act:

(1) "Board" means the CMRS board established in KRS 65.7623;

(2) "Department" means the Kentucky Department of Revenue;

(3) "Fund" means the CMRS fund established in Section 2 of this Act;

(4) "Prepaid wireless service charge" means the prepaid wireless service charge imposed under Section 5 of this Act and collected under Sections 6 to 15 of this Act;

(5) "Purchaser" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(6) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale; and

(7) "Seller" means a person who sells a prepaid wireless telecommunications service to any person for a purpose other than resale.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO

READ AS FOLLOWS:

- (1) The department shall administer the prepaid wireless service charge as provided in Sections 6 to 16 of this Act.
- (2) A seller shall collect the prepaid wireless service charge from purchasers pursuant to Section 5 of this Act, and shall remit the amounts collected to the department on a monthly basis, on or before the twentieth day of the next succeeding calendar month.
- (3) The prepaid wireless service charge collected by the seller from any purchaser shall:

  - (a) Be deemed to be held in trust by the seller for and on account of the Commonwealth; and
  - (b) Constitute a debt of the seller to the Commonwealth.

→SECTION 8. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO

READ AS FOLLOWS:

Each seller shall file an application for a certificate of registration with the department within sixty (60) days of the effective date of this Act. Every seller seeking to sell prepaid wireless telecommunications service in Kentucky for the first time shall, prior to selling prepaid wireless telecommunications service, file an application for a certificate of registration with the department. The application shall be in the form prescribed by the department. The application shall be signed by an executive officer or a person specifically authorized by the seller to sign the application.

→SECTION 9. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO

READ AS FOLLOWS:

- (1) On or before the twentieth day of the month, each seller shall file a return for the preceding month with the department in a form prescribed by the department, together with payment of any prepaid wireless service charges collected during the preceding month.

(2) The return shall be signed by the person required to file the return or a duly authorized agent.

(3) To reimburse itself for the cost of collecting and remitting the prepaid wireless service charge, each seller may deduct and retain from the prepaid wireless service charge it collects during each calendar month an amount not to exceed three percent (3%) of the gross aggregate amount of prepaid wireless service charges it collected that month, not to exceed a total of one thousand dollars (\$1,000).

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) As soon as practicable after each return is received, the department shall examine and audit the return. If the amount due as computed by the department is greater than the amount remitted by the seller, the excess shall be assessed by the department on behalf of the board within four (4) years from the date prescribed by law for filing of the return, except as provided in this section. A notice of assessment shall be mailed to the seller.

(2) In case of a failure to file a return or the filing of a fraudulent return, the excess may be assessed by the department at any time.

(3) A seller aggrieved by an action of the department may request a review and shall have the rights of an appeal as set forth in KRS Chapter 131.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Each seller shall keep records, receipts, invoices, and other pertinent papers in the form that the department requires.

(2) Each seller who files the returns required by Section 9 of this Act shall keep records for not less than six (6) years from the making of the records, unless the department in writing authorizes their destruction at an earlier date.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

*Any prepaid wireless service charges not paid on or before the due date shall bear interest at the tax interest rate established by KRS 131.183 from the date due until the date of payment.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

*(1) Penalties shall be imposed and assessed in accordance with the provisions of KRS 131.180.*

*(2) The prepaid wireless service charge shall be treated the same as a tax under the provisions of KRS 131.180 for the purposes of assessing penalties.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

*(1) The department shall administer the provisions of Sections 6 to 16 of this Act, and shall have all of the necessary powers, right, duties, and authority with respect to the assessment, collection, and administration of the prepaid wireless service charge.*

*(2) The board shall fully cooperate with the department and shall provide the department with any information requested to carry out the provisions of Sections 6 to 16 of this Act.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

*(1) The department shall deposit the amounts collected pursuant to Section 7 of this Act in the fund on a monthly basis. From each deposit, the department may deduct an amount equal to the actual operating and overhead expenses incurred in the collection and administration of the prepaid wireless service charge, not to exceed one percent (1%) of the amount collected. The department shall report its*

actual expenses to the board on a quarterly basis.

(2) A report of revenue receipts from the prepaid wireless service charge shall be provided on a monthly basis by the department to the board.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any other provision of Sections 6 to 16 of this Act, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any service connection provider subject to Section 5 and Sections 6 to 16 of this Act shall be liable personally and individually, and jointly and severally, for the prepaid wireless service charge imposed by Section 5 of this Act. Neither the corporate dissolution, nor withdrawal from the state of a seller, nor the cessation of holding any corporate office shall discharge the liability imposed by this section. The personal and individual liability shall apply to each person holding a corporate office at the time the prepaid wireless service charge becomes or became due. No person shall be personally and individually liable pursuant to this section if that person did not have the authority in the management of the business or financial affairs of the seller at the time the prepaid wireless service charge was imposed.

(2) Notwithstanding KRS 275.150, 362.1-306(3) or predecessor law, 362.2-404(3), or any other provision of the law to the contrary, the managers of a limited liability company, the partners of a limited liability partnership, and the partners of a limited liability limited partnership, or any other persons holding any equivalent office of a limited liability company, limited liability partnership, or limited liability limited partnership subject to KRS 136.600 to 136.660 shall be both liable personally and individually, and jointly and severally, liable for the prepaid wireless service charge imposed by Section 5 of this Act. Neither the dissolution nor withdrawal of a limited liability company, limited liability partnership, or

limited liability limited partnership from the state nor the cessation of holding any office shall discharge the foregoing liability of any person. The personal and individual liability shall apply to each manager of a limited liability company, partner of a limited liability partnership, and general partner of a limited liability limited partnership at the time the prepaid wireless service charge becomes or became due. No person shall be personally and individually liable under this subsection, if that person had no authority to collect, account for, or pay over the prepaid wireless service charge at the time that the prepaid wireless service charge imposed by Section 5 of this Act becomes or became due.