

Appendix A: Public Chapter 795, Acts of 2014

DRAFT



State of Tennessee

PUBLIC CHAPTER NO. 795

HOUSE BILL NO. 2255

By Representatives McCormick, Evans, McDaniel, Haynes, Lundberg, Swann, Armstrong, Coley, Sargent, Kevin Brooks, Watson, McManus, Powell, Moody, Harrison, Cooper, Favors, Shaw, Camper, Casada, Hawk, Alexander, John DeBerry, Kent Williams, Eldridge, Curtis Johnson, Keisling, Ryan Williams, Forgety, Spivey, Faison, Dunn, Butt, Parkinson, Ramsey, Wirgau, Sanderson, Shipley, Hall, Akbari, Littleton, Doss, Powers, Dale Carr, Carter, Matheny, Bailey, Sexton, Mike Turner, Odom, Dean, Jernigan, Marsh, Calfee, Matlock, Rich, Womick, Mark White, Dennis, Floyd, Towns, Gilmore, Miller, Rogers, Ragan

Substituted for: Senate Bill No. 2407

By Senators Norris, Gardenhire, Kelsey, Overbey, Harper, Crowe, Gresham, Dickerson, Watson, Bowling, Niceley, McNally, Johnson, Massey, Haile, Green, Ketron, Stevens, Hensley, Southerland, Yager, Ford, Henry, Tate

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 86; Section 9-8-307; Title 29, Chapter 20 and Title 65, relative to the "911 Funding Modernization and IP Transition Act of 2014".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "911 Funding Modernization and IP Transition Act of 2014".

SECTION 2. Tennessee Code Annotated, Section 7-86-103, is amended by adding the following as new, appropriately designated subdivisions:

() "911 surcharge" means the surcharge that is required to be collected from consumers under § 7-86-128(a);

() "Communications service" means a service that:

(A) Is capable of contacting and has been enabled to contact a public safety answering point (PSAP) via a 911 network by entering or dialing the digits 911;

(B) Is a "telecommunications service" as defined by § 67-6-102; and

(C) Is neither "prepaid calling service" nor "prepaid wireless calling service" as defined in § 67-6-102;

() "Consumer" means a person who purchases retail communications service or prepaid communications services in a retail transaction;

() "Dealer" has the meaning set forth in § 67-6-102;

() "Prepaid communications service" means "prepaid wireless calling service", as set forth in § 67-6-102, that is capable of contacting a PSAP by entering or dialing the digits 911;

() "Retail sale" has the meaning set forth in § 67-6-102;

() "Sales price" has the meaning set forth in § 67-6-102;

SECTION 3. Tennessee Code Annotated, Title 7, Chapter 86, Part 1, is amended by deleting §§ 7-86-108, 7-86-111 and 7-86-112 in their entirety.

SECTION 4. Tennessee Code Annotated, Section 7-86-128, is amended by deleting the section in its entirety and substituting instead the following:

7-86-128.

(a)

(1) Effective January 1, 2015, when a dealer collects the sales price for a retail sale of communications service or prepaid communications service from a consumer, such dealer shall collect a 911 surcharge of one dollar and sixteen cents (\$1.16).

(2) Any change in the 911 surcharge amount set in subdivision (a)(1) shall be set at a level that is sufficient to fully fund the mandatory disbursements to emergency communications districts, the operational expenses of the state emergency communications board, referred to as "board" in this section, and the Tennessee relay services/telecommunications devices access program ("TRS/TDAP program") as provided in § 65-21-115. In the event of any revenue shortfall, mandatory disbursements to the emergency communications districts and the TRS/TDAP program shall be given priority. Revenues from the surcharge authorized in this section shall be used to support the long-term solvency and operations of emergency communications districts, as well as reasonable and necessary administrative and operational expenses of the board and the 911 Emergency Communications Fund.

(3) If the sales price for a retail sale of communications service is collected by a dealer less frequently than monthly, the 911 surcharge shall still apply and be collected for each month or partial month for which the sales price is collected.

(b)

(1) The board may increase the 911 surcharge upon determination of a need for additional funds after a public hearing before the board. At least thirty (30) days' notice shall be provided before the public hearing. There shall be opportunity for public comment at the public hearing. No increase in the 911 surcharge shall take effect until ratified by a joint resolution of the general assembly. Not less than ninety (90) days prior to the rate change, notice of the change shall be provided to all dealers in the manner that notices are provided of changes in sale tax rates pursuant to title 67.

(2) The board may decrease the amount of the 911 surcharge after providing thirty (30) days' notice and opportunity for public comment at a public hearing of the board. After determination of a decrease, the board must give at least sixty (60) days' notice to the speaker of the house of representatives, the speaker of the senate, and the governor. Not less than ninety (90) days prior to the rate change, notice of the change shall be provided to all dealers in the manner that notices are provided of changes in sales tax rates pursuant to title 67.

(3) It is the intent of the general assembly that the 911 surcharge be established at the lowest rate practicable consistent with the purposes of this section. The board shall report annually to the finance, ways and means committees of the senate and house of representatives on the financial status and solvency of emergency communications districts, status of the implementation of a uniform statewide 911 system and the status, level and solvency of the 911 Emergency Communications Fund.

(c) The 911 surcharge applicable to any multi-channel or other complex service that is capable of simultaneously carrying multiple voice and data transmissions, including, but not limited to, private branch exchange service, that is provided to a fixed location with a unique street address or physically identifiable location shall be calculated by applying one (1) 911 surcharge for each simultaneous outbound call that can be placed to 911 using such service.

(d) The maximum number of 911 surcharges that may be imposed on a single subscriber of retail communications services provided to a fixed location shall not exceed two hundred (200) surcharges per building with a unique street address or physically identifiable location. A communications service that is priced lower than five dollars (\$5.00) per month or a prepaid communications service priced below a one-time fee of less than ten dollars (\$10.00) shall not constitute a retail communications service for purposes of the 911 surcharge and shall not be subject to a 911 surcharge in accordance with subsection (a).

(e) The 911 surcharge shall, when practicable, be displayed as a separate line item by dealers of communications service on customer bills or invoices. 911 surcharge revenue actually collected by a dealer shall be remitted to the board every two (2) months. No additional or local 911 surcharges on retail communications service shall be permitted. Dealers of retail communications service shall have no obligation to remit surcharges that they are unable to collect from subscribers.

(f)

(1) For prepaid communications service, the surcharge shall be collected at the point of sale and remitted to the department of revenue at the times and in the manner provided by title 67, chapter 6, with respect to the sales and use taxes. The department of revenue shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply under title 67, chapter 6.

(2) A dealer of prepaid communications service shall be permitted to deduct and retain up to three percent (3%) of 911 surcharges that are collected by the dealer from consumers.

(3) The audit and appeal procedures applicable under title 67, chapter 1, shall apply to the 911 surcharges on prepaid communications service.

(4) The department of revenue shall pay all remitted 911 surcharges to the board within thirty (30) days of receipt, for use by the board in accordance with part 3 of this chapter. The department of revenue may deduct an amount, up to two percent (2%) of collected charges, to be retained by the department of revenue to reimburse its direct costs of administering the collection and remittance of 911 surcharges.

(g) The 911 surcharge is the liability of the subscriber and not of the dealer. Dealers are authorized to demand payment from any subscriber who fails to pay any authorized 911 surcharge, and may take legal action, in the sole discretion of the dealer, to collect the 911 surcharge from any such subscriber, or may, in the alternative, and without any liability to such subscriber for any losses or damages that result from termination, terminate all service to such subscriber.

(h) Notwithstanding this section to the contrary, the board may withhold such distribution to an emergency communications district, if the district is operating in, or fails to correct a specific violation of state law. This may include, but not be limited to, the failure to submit an annual budget or audit, operating contrary to the open meeting requirements of title 8, chapter 44, part 1, or failure to comply with any requirements of this chapter 86. Further, the board may also withhold such distribution if it deems that the district is not taking sufficient actions or acting in good faith to establish, maintain, or advance E911 service for the citizens of an emergency communications district.

SECTION 5. Tennessee Code Annotated, Section 7-86-110, is amended by deleting the section in its entirety and substituting instead the following:

7-86-110.

(a) The board shall have the duty to ensure that dealers of retail communications service are in compliance for 911 surcharge collections and remittance. In carrying out such duty, the board shall have exclusive standing to bring claims against dealers of

retail communications service for non-payment or under-collection errors or other injuries relating to collection of 911 surcharges. The board's exclusive standing to bring such claims shall not impact any litigation against dealers of retail communications service regarding 911 surcharges that pre-date this subsection (a).

(b) Dealers shall be entitled to retain as an administrative fee an amount equal to three percent (3%) of the collections of the 911 surcharge on the retail sale of communications service.

(c) Damages for civil claims arising out of collection shall be adjudicated by the Tennessee claims commission and any award of damages shall either be limited to the actual amount of 911 surcharges not collected, including, at the discretion of the claims commission, reasonable interest, or the maximum award the claims commission may award per claimant or occurrence, whichever is greater.

(d) Each dealer of retail communications service shall annually provide to the board an accounting of the amounts billed and collected and the disposition of such amounts. Such accounting shall be subject to audit or review by the comptroller of the treasury.

(e) In the event an audit or accounting is initiated by multiple state government departments, such departments shall coordinate efforts to minimize administrative burdens and duplicative undertakings.

SECTION 6. Tennessee Code Annotated, Section 7-86-303, is amended by deleting subsections (c) and (d) and substituting instead the following as new subsections thereto:

(c) The board shall be funded by the 911 surcharge established in § 7-86-128.

(d) All current funds, including those funds currently in the 911 Emergency Communications Fund, funds collected by the board in future, and interest accrued on these funds shall be deposited in the state treasury in a separate interest-bearing fund to be known as the 911 Emergency Communications Fund. Disbursements from this fund shall be limited solely to the operational and administrative expenses of the board and the purposes as expressed in this part 3. At no time during its existence shall the 911 Emergency Communications Fund, or earnings derived thereof, be used to fund the general expenses of the state of Tennessee.

(e) In order to maintain adequate 911 funding provided to emergency communications districts, the board shall annually distribute to each emergency communications district a base amount equal to the average of total recurring annual revenue the district received from distributions from the board and from direct remittance of 911 surcharges for fiscal years 2010, 2011, and 2012; however, in no event shall such distribution be less than the amount the district received in fiscal year 2012. On or before December 1, 2014, the board shall publish on its web site the base amount for each emergency communications district. The board may not reduce the base amount for any emergency communications district unless the local government funding for such emergency communications district is reduced, in which case the board may reduce the base amount by the same amount as the local funding reduction. Any emergency communication district established after the effective date of this act shall be entitled to receive a base amount from the board in an amount determined by the board. Disbursal of the base amount to emergency communications districts shall be conducted in the following manner:

(1) The board shall distribute one-sixth (1/6) of the base amount for each emergency communications district every two (2) months, beginning at the end of the second month of each fiscal year; and

(2) Any emergency communications district with a locally established 911 surcharge in effect as of July 1, 2011, less than the maximum allowable surcharge then in effect shall be eligible to apply to the board for an increase in the base amount. The board shall promulgate rules and regulations to facilitate such a request and to set minimum criteria that the emergency communication district must satisfy to obtain increased funding. The board shall not be obligated

to increase the base amount if the board lacks sufficient funds or if the board, after reviewing its criteria as set out in its rules, finds the emergency communication district has not met the guidelines.

(f) The board's operational expenses shall include the implementation and maintenance of an IP-based next generation 911 network and any future 911 system advancements the board deems necessary, provided that the board shall provide a report to the information systems council each year to describe any such future 911 system advancements. The board's operational expenses shall also include funding to the Tennessee regulatory authority for the Tennessee relay services/telecommunications devices access program ("TRS/TDAP"), which provides assistance to those Tennesseans whose disabilities interfere with their use of communications services and technologies. Funding provided by the board shall not exceed the total cost of the TRS /TDAP program in 2012 unless approved by the fiscal review committee.

SECTION 7. Tennessee Code Annotated, Title 7, Chapter 86, Part 1, is amended by adding the following as a new section thereto:

7-86-130.

Any 911 surcharge revenue collected in excess of the annual fiscal requirements of the board and the mandatory every two (2) months payments to emergency communications districts shall not revert to the general fund. The board shall distribute a minimum of fifty percent (50%) of any revenue collected in excess of its annual fiscal requirements to the emergency communications districts in accordance with policies adopted by the board. Any unspent funds at the end of a fiscal year shall be carried forward to the next fiscal year to be used as a beginning balance of the fiscal requirements for such fiscal year.

SECTION 8. Tennessee Code Annotated, Section 7-86-320, is amended by adding the following as a new subsection thereto:

(d)

(1) Emergency communications districts shall be immune from suit or liability for civil claims arising from the actions or omission of emergency communications district personnel in processing emergency calls, except that claims for recklessness or intentional misconduct in processing emergency calls shall be permitted, but damages for such claims shall not exceed actual damages or the maximum award that may be awarded per claimant by the Tennessee claims commission.

(2) A provider or user of 911 services or next generation 911 services, a public safety answering point, and the officers, directors, employees, vendors, agents, and authorizing government entity, if any, of such provider, user, or public safety answering point, shall have immunity and protection from liability under federal and state law to the extent provided in subdivision (d)(1) with respect to:

(A) The release of subscriber information related to emergency calls or emergency services;

(B) The use or provision of 911 services, E911 services, or next generation 911 services; and

(C) Other matters related to 911 services, E911 services, or next generation 911 services.

(3) A dealer or provider of telecommunications service and other services, a user of such services, and a public safety answering point, and the officers, directors, employees, agents, vendors, and authorizing government entity, if any, involved in providing 911 service, shall not be liable for:

(A) Any civil claim, damage, or loss caused by an act or omission in the design, development, installation, maintenance, or provision of 911 service;

(B) The release of subscriber information related to emergency calls or emergency services; and

(C) Other matters related to the provision of 911 service.

SECTION 9. Tennessee Code Annotated, Section 29-20-108(b), is amended by deleting the subsection and substituting instead the following:

(b) Such immunity shall also extend to employees of an emergency communications district, and county and municipal governments for the acts or omissions of employees that manage, supervise, or perform 911 emergency communications service as communicators or dispatchers, provided that all such employees shall attain and maintain training requirements as may be required by law.

SECTION 10. Tennessee Code Annotated, Title 7, Chapter 86, is amended by adding the following as a new section thereto:

7-86-131.

The Tennessee advisory commission on intergovernmental relations shall study and report its conclusions to the joint committee on government operations on or before September 15, 2017, regarding the following matters:

(1) Whether the 911 surcharge is generating adequate revenue to cover the costs of the services, equipment, maintenance and improvements needed to provide a uniform, stable and effective statewide 911 system;

(2) Whether the expansion of 911 system functionality resulting from implementation of IP-based next generation 911 technology has increased or decreased costs for emergency communications districts;

(3) Whether there is a need or benefit to consolidate emergency communications districts or PSAPs;

(4) Whether the 911 surcharge is generating more revenue than necessary to implement the purpose of this act and can be reduced to the benefit of communications consumers;

(5) Whether a flat rate communications services surcharge is the best manner in which to fund 911 system costs or whether such costs should be funded by a percentage surcharge or a different source, such as water service, electric power service or state general funds or local taxes;

(6) Whether the board membership of the state emergency communications board should be amended to include other stakeholders such as telecommunications providers, emergency communications districts that dispatch, and other interested parties;

(7) Whether there is a need or benefit for the board to have the ability to raise the 911 surcharge rate should there be a financial reason to do so;

(8) Whether there is a need or benefit for the providers of communications services to register with the board prior to providing service; and

(9) Whether there is a need or benefit for providers of communications services to notify the board when there is a known service interruption.

SECTION 11. Tennessee Code Annotated, Section 7-86-305, is amended by adding the following new subsection (c):

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(c) For purposes of determining whether an emergency communications district is financially distressed, the board shall not consider an emergency communications district's depreciation costs as an operating expense.

SECTION 12. Tennessee Code Annotated, Section 65-21-115, is amended by deleting the section in its entirety and substituting instead the following:

65-21-115.

(a) Funding for the Tennessee relay services/telecommunications devices access program ("TRS/TDAP") programs shall be provided by the state emergency communications board. Such funding shall not exceed the total cost of the TRS/TDAP program in 2012 unless approved by the fiscal review committee.

(b) The Tennessee regulatory authority may create a reserve for the TRS/TDAP program which shall not exceed one million dollars (\$1,000,000) in any given year.

(c) It is the legislative intent that the TRS/TDAP program be designed with consideration of fair distribution of equipment that is technologically available and economically feasible to be provided to assist individuals with any disability using the basic telephone network.

(d) The administrative cost of the Tennessee regulatory authority to implement this section shall come from the funding described in subsection (a).

(e) The Tennessee regulatory authority is authorized to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this section.

SECTION 14. Tennessee Code Annotated Section 9-8-307(a)(1), is amended to add the following as new, appropriately designated subdivision:

() Claims arising out of the billing, collection, or remittance of 911 surcharges;

SECTION 15. This act shall take effect January 1, 2015, the public welfare requiring it.

HOUSE BILL NO. 2255

PASSED: April 7, 2014

Beth Harwell

BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

Ron Ramsey

RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this ^{25th}~~28th~~ day of April 2014

Bill Haslam

BILL HASLAM, GOVERNOR