

Chapter 313

(Senate Bill 745)

AN ACT concerning

Public Safety – 9–1–1 Emergency Telephone Systems – Prepaid Service – Collection of Surcharge

FOR the purpose of establishing that the surcharge on wireless telecommunication services applies to prepaid service; establishing the amount of the prepaid wireless E 9–1–1 fee; allowing for the collection of the fee for the purpose of contributing to the 9–1–1 Trust Fund; authorizing certain percentages of the money collected from the fee to be used for certain purposes; providing that the fee shall be collected for certain transactions; providing that the fee is not subject to the sales and use tax; authorizing a seller to deduct and retain certain percentages of the fee under certain circumstances; establishing certain procedures for the collection of the fee; authorizing a seller to demonstrate a certain exemption from the fee in a certain manner; authorizing the Comptroller to adopt certain regulations; establishing certain immunity provisions; establishing that certain procedures apply to this Act; prohibiting certain charges from being imposed; defining certain terms; making technical changes; and generally relating to 9–1–1 emergency telephone systems and the collection of fees to support the systems.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 1–301 through 1–303 and 1–308 through 1–311
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY adding to
Article – Public Safety
Section 1–313
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

1–301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Additional charge” means the charge imposed by a county in accordance with § 1–311 of this subtitle.

(c) “Board” means the Emergency Number Systems Board.

(d) “Commercial mobile radio service” or “CMRS” means mobile telecommunications service that is:

- (1) provided for profit with the intent of receiving compensation or monetary gain;
- (2) an interconnected, two-way voice service; and
- (3) available to the public.

(e) “Commercial mobile radio service provider” or “CMRS provider” means a person authorized by the Federal Communications Commission to provide CMRS in the State.

(f) “County plan” means a plan for a 9–1–1 system or enhanced 9–1–1 system, or an amendment to the plan, developed by a county or several counties together under this subtitle.

(g) (1) “Customer” means:

(i) the person that contracts with a home service provider for CMRS; or

(ii) the end user of the CMRS if the end user of the CMRS is not the contracting party.

(2) “Customer” does not include:

(i) a reseller of CMRS; or

(ii) a serving carrier under an arrangement to serve the customer outside the home service provider’s licensed service area.

(h) “Enhanced 9–1–1 system” means a 9–1–1 system that provides:

- (1) automatic number identification;
- (2) automatic location identification; and
- (3) any other technological advancements that the Board requires.

(i) "FCC order" means an order issued by the Federal Communications Commission under proceedings regarding the compatibility of enhanced 9-1-1 systems and delivery of wireless enhanced 9-1-1 service.

(j) "Home service provider" means the facilities-based carrier or reseller that contracts with a customer to provide CMRS.

(k) "Next generation 9-1-1 services" means an Internet Protocol (IP)-based system, comprised of hardware, software, data, and operational policies and procedures, that:

(1) provides standardized interfaces from emergency call and message services to support emergency communications;

(2) processes all types of emergency calls, including voice, text, data, and multimedia information;

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

(4) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;

(5) supports data or video communications needs for coordinated incident response and management; and

(6) provides broadband service to public safety answering points or other first responder entities.

(l) "9-1-1-accessible service" means telephone service or another communications service that connects an individual dialing the digits 9-1-1 to an established public safety answering point.

(m) "9-1-1 fee" means the fee imposed in accordance with § 1-310 of this subtitle.

(n) (1) "9-1-1 service carrier" means a provider of CMRS or other 9-1-1-accessible service.

(2) "9-1-1 service carrier" does not include a telephone company.

(o) (1) "9-1-1 system" means telephone service that:

(i) meets the planning guidelines established under this subtitle; and

(ii) automatically connects an individual dialing the digits 9-1-1 to an established public safety answering point.

(2) “9-1-1 system” includes:

(i) equipment for connecting and outswitching 9-1-1 calls within a telephone central office;

(ii) trunking facilities from a telephone central office to a public safety answering point; and

(iii) equipment to connect 9-1-1 calls to the appropriate public safety agency.

(p) “9-1-1 Trust Fund” means the fund established under § 1-308 of this subtitle.

(Q) “PREPAID WIRELESS E 9-1-1 FEE” MEANS THE FEE THAT IS REQUIRED TO BE COLLECTED BY A SELLER FROM A CONSUMER IN THE AMOUNT ESTABLISHED UNDER § 1-313 OF THIS SUBTITLE.

(R) “PREPAID WIRELESS TELECOMMUNICATIONS SERVICE” MEANS A COMMERCIAL MOBILE RADIO SERVICE THAT:

(1) ALLOWS A CONSUMER TO DIAL 9-1-1 TO ACCESS THE 9-1-1 SYSTEM;

(2) MUST BE PAID FOR IN ADVANCE; AND

(3) IS SOLD IN PREDETERMINED UNITS THAT DECLINE WITH USE IN A KNOWN AMOUNT.

[(q)] (S) “Public safety agency” means:

(1) a functional division of a public agency that provides fire fighting, police, medical, or other emergency services; or

(2) a private entity that provides fire fighting, police, medical, or other emergency services on a voluntary basis.

[(r)] (T) “Public safety answering point” means a communications facility that:

(1) is operated on a 24-hour basis;

(2) first receives 9-1-1 calls in a 9-1-1 service area; and

(3) as appropriate, dispatches public safety services directly, or transfers 9-1-1 calls to appropriate public safety agencies.

[(s)] (U) "Secretary" means the Secretary of Public Safety and Correctional Services.

(V) "SELLER" MEANS A PERSON THAT SELLS PREPAID WIRELESS TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

[(t)] (W) "Wireless enhanced 9-1-1 service" means enhanced 9-1-1 service under an FCC order.

1-302.

(a) The General Assembly:

(1) recognizes the paramount importance of the safety and well-being of the public;

(2) recognizes that timely and appropriate assistance must be provided when the lives or property of the public [is] **ARE** in imminent danger;

(3) recognizes that emergency assistance usually is summoned by telephone, and that a multiplicity of emergency telephone numbers existed throughout the State and within each county;

(4) was concerned that avoidable delays in reaching appropriate emergency assistance were occurring to the jeopardy of life and property; [and]

(5) acknowledges that the three digit number, 9-1-1, is a nationally recognized and applied telephone number that may be used to summon emergency assistance and to eliminate delays caused by lack of familiarity with emergency numbers and by confusion in circumstances of crisis; **AND**

(6) RECOGNIZES THAT ALL END USER CUSTOMERS OF 9-1-1-ACCESSIBLE SERVICES, INCLUDING CONSUMERS OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE, SHOULD CONTRIBUTE IN A FAIR AND EQUITABLE MANNER TO THE 9-1-1 TRUST FUND.

(b) The purposes of this subtitle are to:

(1) establish the three digit number, 9-1-1, as the primary emergency telephone number for the State; and

(2) provide for the orderly installation, maintenance, and operation of 9-1-1 systems in the State.

1-303.

(a) (1) This subtitle does not require a public service company to provide any equipment or service other than in accordance with tariffs approved by the Public Service Commission.

(2) The provision of services, the rates, and the extent of liability of a public service company are governed by the tariffs approved by the Public Service Commission.

(b) (1) This subtitle does not require a 9-1-1 service carrier to provide any equipment or service other than the equivalent of the equipment and service required of a telephone company under subsection (a) of this section.

(2) This subtitle does not extend any liability to a 9-1-1 service carrier **OR SELLER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.**

1-308.

(a) There is a 9-1-1 Trust Fund.

(b) The purposes of the 9-1-1 Trust Fund are to:

(1) reimburse counties for the cost of enhancing a 9-1-1 system;

(2) pay contractors in accordance with § 1-306(b)(12) of this subtitle;

and

(3) fund the coordinator position and staff to handle the increased duties related to wireless enhanced 9-1-1 service under § 1-305 of this subtitle, as an administrative cost.

(c) The 9-1-1 Trust Fund consists of:

(1) money from the 9-1-1 fee collected and remitted to the Comptroller under § 1-310 of this subtitle;

(2) money from the additional charge collected and remitted to the Comptroller under § 1-311 of this subtitle; [and]

(3) MONEY FROM THE PREPAID WIRELESS E 9-1-1 FEE COLLECTED AND REMITTED TO THE COMPTROLLER UNDER § 1-313 OF THIS SUBTITLE; AND

~~[(3)] (4)~~ investment earnings of the 9-1-1 Trust Fund.

(d) Money in the 9-1-1 Trust Fund shall be held in the State Treasury.

(e) The Secretary shall administer the 9-1-1 Trust Fund, subject to the guidelines for financial management and budgeting established by the Department of Budget and Management.

(f) The Secretary shall direct the Comptroller to establish separate accounts in the 9-1-1 Trust Fund for the payment of administrative expenses and for each county.

(g) (1) Any investment earnings shall be credited to the 9-1-1 Trust Fund.

(2) The Comptroller shall allocate the investment income among the accounts in the 9-1-1 Trust Fund, prorated on the basis of the total fees collected in each county.

1-309.

(a) On recommendation of the Board, each year the Secretary shall request an appropriation from the 9-1-1 Trust Fund in an amount sufficient to:

(1) carry out the purposes of this subtitle;

(2) pay the administrative costs chargeable to the 9-1-1 Trust Fund;
and

(3) reimburse counties for the cost of enhancing a 9-1-1 system.

(b) (1) Subject to the limitations under subsection (e) of this section, the Comptroller shall disburse the money in the 9-1-1 Trust Fund as provided in this subsection.

(2) Each July 1, the Comptroller shall allocate sufficient money from the 9-1-1 fee to pay the costs of administering the 9-1-1 Trust Fund.

(3) As directed by the Secretary and in accordance with the State budget, the Comptroller, from the appropriate account, shall:

(i) reimburse counties for the cost of enhancing a 9-1-1 system;
and

(ii) pay contractors in accordance with § 1-306(b)(12) of this subtitle.

(4) (i) The Comptroller shall pay to each county from its account the money requested by the county to pay the maintenance and operation costs of the county's 9-1-1 system in accordance with the State budget.

(ii) The Comptroller shall pay the money for maintenance and operation costs on September 30, December 31, March 31, and June 30 of each year.

(c) (1) Money accruing to the 9-1-1 Trust Fund may be used as provided in this subsection.

(2) Money collected from the 9-1-1 fee may be used to:

(i) reimburse counties for the cost of enhancing a 9-1-1 system;
and

(ii) pay contractors in accordance with § 1-306(b)(12) of this subtitle.

(3) Money collected from the additional charge may be used by the counties for the maintenance and operation costs of the 9-1-1 system.

(4) MONEY COLLECTED FROM THE PREPAID WIRELESS E 9-1-1 FEE MAY BE USED AS FOLLOWS:

(I) 25% FOR THE SAME PURPOSE AS THE 9-1-1 FEE UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND

(II) 75% FOR THE SAME PURPOSE AS THE ADDITIONAL CHARGE UNDER PARAGRAPH (3) OF THIS SUBSECTION, PRORATED ON THE BASIS OF THE TOTAL FEES COLLECTED IN EACH COUNTY.

(d) (1) Reimbursement may be made only to the extent that county money was used to enhance the 9-1-1 system.

(2) Reimbursement for the enhancement of 9-1-1 systems shall include the installation of equipment for automatic number identification, automatic location identification, and other technological advancements that the Board requires.

(3) Reimbursement from money collected from the 9-1-1 fee may be used only for 9-1-1 system enhancements approved by the Board.

(e) (1) The Board may direct the Comptroller to withhold from a county money for 9-1-1 system expenditures if the county violates this subtitle or a regulation of the Board.

(2) (i) The Board shall state publicly in writing its reason for withholding money from a county and shall record its reason in the minutes of the Board.

(ii) On reaching its decision to withhold money, the Board shall notify the county.

(iii) The county has 30 days after the date of notification to respond in writing to the Board.

(3) (i) On notification by the Board, the Comptroller shall hold money for the county in the county's account in the 9-1-1 Trust Fund.

(ii) Money held by the Comptroller under subparagraph (i) of this paragraph does not accrue interest for the county.

(iii) Interest income earned on money held by the Comptroller under subparagraph (i) of this paragraph accrues to the 9-1-1 Trust Fund.

(4) County money withheld by the Comptroller shall be withheld until the Board directs the Comptroller to release the money.

(f) (1) The Legislative Auditor shall conduct fiscal/compliance audits of the 9-1-1 Trust Fund and of the appropriations and disbursements made for purposes of this subtitle.

(2) The cost of the fiscal portion of the audits shall be paid from the 9-1-1 Trust Fund as an administrative cost.

1-310.

(A) THIS SECTION DOES NOT APPLY TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

[(a)] (B) Each subscriber to **[switched] SWITCH** local exchange access service or CMRS or other 9-1-1-accessible service shall pay a 9-1-1 fee.

[(b)] (C) The 9-1-1 fee is 25 cents per month, payable when the bill for the telephone service or CMRS or other 9-1-1-accessible service is due.

[(c)] (D) (1) The Public Service Commission shall direct each telephone company to add the 9-1-1 fee to all current bills rendered for switched local exchange access service in the State.

(2) Each telephone company:

(i) shall act as a collection agent for the 9-1-1 Trust Fund with respect to the 9-1-1 fees;

(ii) shall remit all money collected to the Comptroller on a monthly basis; and

(iii) is entitled to credit, against the money from the 9-1-1 fees to be remitted to the Comptroller, an amount equal to 0.75% of the 9-1-1 fees to cover the expenses of billing, collecting, and remitting the 9-1-1 fees and any additional charges.

(3) The Comptroller shall deposit the money remitted in the 9-1-1 Trust Fund.

[(d)] (E) (1) Each 9-1-1 service carrier shall add the 9-1-1 fee to all current bills rendered for CMRS or other 9-1-1-accessible service in the State.

(2) Each 9-1-1 service carrier:

(i) shall act as a collection agent for the 9-1-1 Trust Fund with respect to the 9-1-1 fees;

(ii) shall remit all money collected to the Comptroller on a monthly basis; and

(iii) is entitled to credit, against the money from the 9-1-1 fees to be remitted to the Comptroller, an amount equal to 0.75% of the 9-1-1 fees to cover the expenses of billing, collecting, and remitting the 9-1-1 fees and any additional charges.

(3) The Comptroller shall deposit the money remitted in the 9-1-1 Trust Fund.

(4) The Board shall adopt procedures for auditing surcharge collection and remittance by CMRS providers.

(5) On request of a CMRS provider, and except as otherwise required by law, the information that the CMRS provider reports to the Board shall be

confidential, privileged, and proprietary and may not be disclosed to any person other than the CMRS provider.

[(e)] (F) Notwithstanding any other provision of this subtitle, the 9-1-1 fee does not apply to an intermediate service line used exclusively to connect a CMRS or other 9-1-1-accessible service, other than a switched local access service, to another telephone system or switching device.

[(f)] (G) A CMRS provider that pays or collects 9-1-1 fees under this section has the same immunity from liability for transmission failures as that approved by the Public Service Commission for local exchange telephone companies that are subject to regulation by the Commission under the Public Utilities Article.

1-311.

(A) THIS SECTION DOES NOT APPLY TO PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

[(a)] (B) In addition to the 9-1-1 fee, the governing body of each county, by ordinance or resolution enacted or adopted after a public hearing, may impose an additional charge to be added to all current bills rendered for switched local exchange access service or CMRS or other 9-1-1-accessible service in the county.

[(b)] (C) (1) The additional charge imposed by a county may not exceed 75 cents per month per bill.

(2) The amount of the additional charges may not exceed a level necessary to cover the total eligible maintenance and operation costs of the county.

[(c)] (D) The additional charge continues in effect until repealed or modified by a subsequent county ordinance or resolution.

[(d)] (E) After imposing, repealing, or modifying an additional charge, the county shall certify the amount of the additional charge to the Public Service Commission.

[(e)] (F) The Public Service Commission shall direct each telephone company that provides service in a county that imposed an additional charge to add, within 60 days, the full amount of the additional charge to all current bills rendered for switched local exchange access service in the county.

[(f)] (G) Within 60 days after a county enacts or adopts an ordinance or resolution that imposes, repeals, or modifies an additional charge, each 9-1-1 service carrier that provides service in the county shall add the full amount of the additional charge to all current bills rendered for CMRS or other 9-1-1-accessible service in the county.

[(g)] (H) (1) Each telephone company and each 9-1-1 service carrier shall:

(i) act as a collection agent for the 9-1-1 Trust Fund with respect to the additional charge imposed by each county;

(ii) collect the money from the additional charge on a county basis; and

(iii) remit all money collected to the Comptroller on a monthly basis.

(2) The Comptroller shall deposit the money remitted in the 9-1-1 Trust Fund account maintained for the county that imposed the additional charge.

1-313.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CONSUMER” MEANS A PERSON THAT PURCHASES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN A RETAIL TRANSACTION.

(3) “PROVIDER” MEANS A PERSON THAT PROVIDES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE UNDER A LICENSE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION.

(4) “RETAIL TRANSACTION” MEANS THE PURCHASE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FROM A SELLER FOR ANY PURPOSE OTHER THAN RESALE.

(B) THERE IS A PREPAID WIRELESS E 9-1-1 FEE OF 60 CENTS PER RETAIL TRANSACTION.

(C) (1) (I) THE PREPAID WIRELESS E 9-1-1 FEE SHALL BE COLLECTED BY THE SELLER FROM THE CONSUMER FOR EACH RETAIL TRANSACTION IN THE STATE.

(II) THE PREPAID WIRELESS E 9-1-1 FEE COLLECTED BY THE SELLER UNDER THIS SECTION IS NOT SUBJECT TO THE SALES AND USE TAX UNDER THE TAX – GENERAL ARTICLE.

(2) A RETAIL TRANSACTION OCCURS IN THE STATE IF:

(I) THE SALE OR RECHARGE TAKES PLACE AT THE SELLER'S PLACE OF BUSINESS LOCATED IN THE STATE;

(II) THE CONSUMER'S SHIPPING ADDRESS IS IN THE STATE;
OR

(III) NO ITEM IS SHIPPED, BUT THE CONSUMER'S BILLING ADDRESS OR THE LOCATION ASSOCIATED WITH THE CONSUMER'S MOBILE TELEPHONE NUMBER IS IN THE STATE.

(D) THE AMOUNT OF THE PREPAID WIRELESS E 9-1-1 FEE SHALL BE DISCLOSED TO THE CONSUMER AT THE TIME OF THE RETAIL TRANSACTION.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE PREPAID WIRELESS E 9-1-1 FEE IS THE LIABILITY OF THE CONSUMER AND NOT OF THE SELLER OR OF ANY PROVIDER.

(2) THE SELLER IS LIABLE FOR REMITTING ALL PREPAID WIRELESS E 9-1-1 FEES THAT THE SELLER COLLECTS FROM CONSUMERS AS PROVIDED IN THIS SECTION.

(F) (1) BEFORE DECEMBER 28, 2013, A SELLER MAY DEDUCT AND RETAIN 50% OF PREPAID WIRELESS E 9-1-1 FEES COLLECTED FROM CONSUMERS FOR DIRECT START-UP COSTS.

(2) ON OR AFTER DECEMBER 28, 2013, A SELLER MAY DEDUCT AND RETAIN 3% OF PREPAID WIRELESS E 9-1-1 FEES COLLECTED FROM CONSUMERS.

(G) A SELLER SHALL REPORT AND REMIT TO THE COMPTROLLER ALL PREPAID WIRELESS E 9-1-1 FEES COLLECTED BY THE SELLER IN THE MANNER PROVIDED FOR THE REMITTING OF THE SALES AND USE TAX UNDER TITLES 11 AND 13 OF THE TAX - GENERAL ARTICLE.

(H) THE COMPTROLLER SHALL DEPOSIT ALL REPORTED AND REMITTED PREPAID WIRELESS E 9-1-1 FEES INTO THE 9-1-1 TRUST FUND WITHIN 30 DAYS OF RECEIPT.

(I) A SELLER MAY DEMONSTRATE THAT A SALE IS NOT A RETAIL TRANSACTION IN A MANNER ESTABLISHED BY THE COMPTROLLER THAT IS SUBSTANTIALLY SIMILAR TO THE PROCEDURES FOR DEMONSTRATING A RESALE FOR EXEMPTION FROM THE SALES AND USE TAX UNDER TITLES 11 AND 13 OF THE TAX - GENERAL ARTICLE.

(J) FOR THE PURPOSE OF THIS SECTION, THE AUDIT AND APPEAL PROCEDURES ESTABLISHED FOR THE SALES AND USE TAX UNDER TITLES 11 AND 13 OF THE TAX – GENERAL ARTICLE APPLY.

(K) A SELLER THAT IS NOT A PROVIDER OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IS NOT LIABLE FOR DAMAGES IN CONNECTION WITH:

(1) THE PROVISION OF, OR FAILURE OF, 9-1-1 OR E 9-1-1 SERVICE;

(2) IDENTIFYING, OR FAILING TO IDENTIFY, THE TELEPHONE NUMBER, ADDRESS, LOCATION, OR NAME ASSOCIATED WITH ANY PERSON OR DEVICE THAT IS ACCESSING OR ATTEMPTING TO ACCESS 9-1-1 OR E 9-1-1 SERVICE; OR

(3) THE PROVISION OF ANY LAWFUL ASSISTANCE TO ANY INVESTIGATIVE OR LAW ENFORCEMENT OFFICER.

(L) PROVIDERS AND SELLERS OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE HAVE THE SAME IMMUNITY FROM LIABILITY FOR TRANSMISSION FAILURES AS THAT APPROVED BY THE PUBLIC SERVICE COMMISSION FOR LOCAL EXCHANGE TELEPHONE COMPANIES THAT ARE SUBJECT TO REGULATION BY THE COMMISSION UNDER THE PUBLIC UTILITIES ARTICLE.

(M) A TAX, A FEE, A SURCHARGE, OR ANY OTHER CHARGE MAY NOT BE IMPOSED BY THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE, OR ANY INTERGOVERNMENTAL AGENCY, FOR E 9-1-1 FUNDING PURPOSES, ON ANY PROVIDER, SELLER, OR CONSUMER WITH RESPECT TO THE SALE, PURCHASE, USE, OR PROVISION OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE.

(N) THE COMPTROLLER SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013.

Approved by the Governor, May 2, 2013.