

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1242\*

Short Title: Wireless Telephone Service Act.

(Public)

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Sponsors: Senators Hoyle, Rand, Odom, Warren, Ballantine, and Hartsell.

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Referred to: Commerce.

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May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

**"CHAPTER 62B.**

**"WIRELESS TELEPHONE SERVICE.**

**"§ 62B-1. Definitions.**

As used in this Chapter:

- (1) 'Automatic location identification' or 'ALI' means a wireless 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 in accordance with the FCC Order and includes pseudo-automatic number identification.
- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.

- 1           (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27)  
2 and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §  
3 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub.  
4 L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term  
5 'wireless' and service provided by any wireless two-way voice  
6 communication device, including radio-telephone communications used  
7 in cellular telephone service, personal communications service, or the  
8 functional competitive equivalent of a radio-telephone communications  
9 line used in cellular telephone service, a personal communications  
10 service, SMR mobile service, or a network radio access line which has  
11 access to E911 service.
- 12           (4) 'CMRS connection' means each mobile handset telephone number  
13 assigned to a CMRS subscriber with a billing address in North Carolina.
- 14           (5) 'CMRS provider' means a person or entity who is licensed by the FCC  
15 to provide CMRS service.
- 16           (6) 'Eligible PSAPs' means those public safety answering points that have  
17 opted to provide wireless Enhanced 911 service and have submitted  
18 written notice to their CMRS providers and to the Wireless Advisory  
19 Board.
- 20           (7) 'FCC Order' means the Order of the Federal Communications  
21 Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- 22           (8) 'Local exchange carrier' means any entity that is authorized to engage in  
23 the provision of telephone exchange service or exchange access in  
24 North Carolina.
- 25           (9) 'Mobile set telephone number' means the number assigned to a CMRS  
26 connection.
- 27           (10) 'Proprietary information' means customer lists and other related  
28 information, technology descriptions, technical information, or trade  
29 secrets, including the term 'trade secrets' as defined by the North  
30 Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or  
31 developmental costs of wireless Enhanced 911 systems that are  
32 developed, produced, or received internally by a CMRS provider or by a  
33 CMRS provider's employees, directors, officers, or agents.
- 34           (11) 'PSAP' ('public safety answering point') means the public safety agency  
35 that receives incoming 911 calls and dispatches appropriate public  
36 safety agencies to respond to such calls.
- 37           (12) 'Pseudo-automatic number identification' or 'Pseudo-ANI' means a  
38 wireless Enhanced 911 service capability that enables the automatic  
39 display of the number of the cell site or cell face.
- 40           (13) 'Service supplier' means a person or entity who provides exchange  
41 telephone service to a telephone subscriber.

1           (14) 'Wireless 911 system' means an emergency telephone system that  
2           provides the user of a CMRS connection the ability to reach a PSAP by  
3           dialing the digits 911.

4           (15) 'Wireless Enhanced 911 system' means an emergency telephone system  
5           that provides the user of the CMRS connection with wireless 911  
6           service and, in addition, directs 911 calls to appropriate PSAPs by  
7           selective routing based on the geographical location from which the call  
8           originated and provides the capability for ANI (or Pseudo-ANI) and  
9           ALI features, in accordance with the requirements of the FCC Order.

10          (16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund  
11          required to be established and maintained pursuant to G.S. 62B-2(c).

12 **"§ 62B-2. Wireless 911 Advisory Board.**

13          (a) There is created a Wireless 911 Advisory Board ('Board'), consisting of nine  
14 members as follows:

15           (1) Two members appointed by the Governor, one upon the  
16           recommendation of the North Carolina League of Municipalities and  
17           one upon the recommendation of the North Carolina Association of  
18           County Commissioners;

19           (2) Three members appointed by the Speaker of the House of  
20           Representatives, two representing CMRS providers licensed to do  
21           business in North Carolina and one representing the North Carolina  
22           Chapter of the Association of Public Safety Communications Officials  
23           (APCO);

24           (3) Three appointed by the President Pro Tempore of the Senate, one  
25           representing CMRS providers licensed to do business in North Carolina,  
26           one representing local exchange carriers licensed to do business in  
27           North Carolina, and one representing the North Carolina Chapter of the  
28           National Emergency Number Association (NENA); and

29           (4) The State Treasurer or the Treasurer's designee, who shall serve as the  
30           chair.

31          A quorum of the Board shall consist of five members. The Board shall meet upon the  
32 call of the chair.

33          (b) Each member shall serve a term of four years and may be appointed to no more  
34 than two successive terms. Vacancies may be filled in the same manner as the original  
35 appointment.

36          (c) The Board shall establish and maintain the Wireless Fund as an insured,  
37 interest-bearing account into which the Board shall deposit all revenues derived from the  
38 service charge levied on CMRS connections in the State and collected pursuant to G.S.  
39 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this  
40 Chapter. The Board may invest the revenue in the Wireless Fund in the same manner  
41 that State funds may be invested. The Board shall deposit any income earned from such  
42 an investment in the Wireless Fund.

1       (d) The Board may disburse the revenues remitted to the Wireless Fund in the  
2 manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of  
3 these revenues and advise the CMRS providers and eligible counties of such procedures  
4 within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

5       (e) The Board shall serve without compensation, but members of the Board shall  
6 receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

7 **"§ 62B-3. Amount of service charge.**

8       (a) The Board shall levy a monthly wireless Enhanced 911 service charge on each  
9 CMRS connection. The rate of such service charge shall initially be set at eighty cents  
10 (80¢) per month per each CMRS connection beginning July 1, 1998. The service charge  
11 shall have uniform application and shall be imposed throughout the State.

12       (b) The service charge may be adjusted by the Board every two years, beginning  
13 July 1, 2000. The Board is to set the service charge at such a rate as to ensure full  
14 recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the  
15 costs associated with developing and maintaining a wireless Enhanced 911 system. If  
16 necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a  
17 reasonable period of time, the Board may, at the time it adjusts the service charge, also  
18 adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

19       (c) The service charge shall not exceed one dollar and twenty-five cents (\$1.25).

20       (d) The Board may adopt other rules and procedures as may be necessary to effect  
21 the provisions of this act, but may not regulate any other aspect of the provision of  
22 wireless Enhanced 911 Service, such as technical standards.

23       (e) No other state agency or local government may levy any additional surcharge  
24 relating to the provision of wireless Enhanced 911 service.

25 **"§ 62B-4. Management of funds.**

26       (a) Each CMRS provider, as a part of its monthly billing process, shall collect the  
27 wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider  
28 may list the service charge as a separate entry on each bill. If a CMRS provider receives  
29 a partial payment for a monthly bill from a subscriber, the provider shall apply the  
30 payment first against the amount the subscriber owes the provider.

31       (b) A CMRS provider has no obligation to take any legal action to enforce the  
32 collection of the service charges for which any subscriber is billed. However, a  
33 collection action may be initiated by the Board and reasonable costs and attorneys' fees  
34 associated with that collection action may be awarded.

35       (c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

36       (d) Each CMRS provider shall be entitled to deduct a one percent (1%)  
37 administrative fee from the total service charges collected.

38       (e) All service charges collected by the CMRS providers, less the administrative  
39 fee described in subsection (d), are to be remitted to the Board to be placed in the  
40 Wireless Fund, not later than 30 days after the end of the calendar month in which such  
41 service charges are collected.

42 **"§ 62B-5. Use of funds.**

1       (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-  
2 2(c) shall be held in escrow and used to reimburse CMRS providers, in response to sworn  
3 invoices submitted to the Board, for the actual costs incurred by the CMRS providers in  
4 complying with the wireless 911 requirements established by the FCC Order and any  
5 rules and regulations which are or may be adopted by the FCC pursuant to the FCC  
6 Order, including costs and expenses incurred for designing, upgrading, purchasing,  
7 leasing, programming, installing, testing, or maintaining all necessary data, hardware, and  
8 software required in order to provide such service as well as the recurring and  
9 nonrecurring costs of operating such service.

10       (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-  
11 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). The  
12 40% Fund shall be distributed as follows:

13           (1) Fifty percent (50%) of it shall be divided equally among the total  
14 number of PSAPs in North Carolina. However, monthly distribution  
15 shall be made only to those PSAPs that have complied with the  
16 provisions of this Chapter. Distribution to each eligible PSAP will  
17 begin the month following its compliance with the provisions of this  
18 Chapter. All monies remaining in this portion of the 40% Fund on  
19 January 31 of each year will then be evenly distributed to each of the  
20 eligible PSAPs.

21           (2) The other fifty percent (50%) shall be divided pro rata among the  
22 eligible PSAPs based on the population served by the PSAP. The  
23 population data to be used will be those numbers on file with the  
24 Secretary of State. All monies remaining in this portion of the 40%  
25 Fund on January 31 of each year will then be evenly distributed to each  
26 of the eligible PSAPs.

27       (c) Sworn invoices shall be presented by CMRS providers in connection with any  
28 request for reimbursement under this section. In no event shall any invoice for  
29 reimbursement be approved for the payment of costs that are not related to compliance  
30 with the wireless Enhanced 911 service requirements established by the FCC Order, and  
31 any rules and regulations which are or may be adopted by the FCC pursuant to the FCC  
32 Order.

33       (d) In no event shall any invoice for reimbursement be approved for payment of  
34 costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the  
35 service charges remitted by such CMRS provider unless prior approval for such  
36 expenditures is received from the Board. If the total amount of invoices submitted to the  
37 Board and approved for payment exceeds the amount in the Wireless Fund in any month,  
38 CMRS providers that have invoices approved for payment shall receive a pro rata share  
39 of the Wireless Fund, based on the relative amount of their approved invoices, available  
40 that month and the balance of the payments will be carried over to the following month or  
41 months, and shall include interest at the rate set out in G.S. 24-1 until all of the approved  
42 payments are made.

43 **"§ 62B-6. Distributions of funds.**

1 (a) The Board shall, upon majority vote, retain an independent, third-party  
2 accounting firm for the purposes of processing checks and distributing funds as directed  
3 by the Board, in accordance with the provision of this Chapter.

4 (b) The Board shall be entitled to deduct a one percent (1%) administrative fee  
5 from the total service charges remitted by the CMRS providers for its expenses.

6 **"§ 62B-7. Provision of services.**

7 In accordance with the FCC Order, no CMRS provider shall be required to provide  
8 wireless Enhanced 911 service until such time as (i) the provider receives a request for  
9 such service from the administrator of a PSAP that is capable of receiving and utilizing  
10 the data elements associated with the service; (ii) funds are available pursuant to G.S.  
11 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911  
12 system.

13 **"§ 62B-8. Audit.**

14 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the  
15 General Statutes to ensure that funds in the Wireless Fund are being managed in  
16 accordance with the provisions of this Chapter, and shall perform an audit at least every  
17 two years. The State Auditor shall provide the audit to the Board when it meets to adjust  
18 the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the  
19 State Auditor by the Board.

20 **"§ 62B-9. Customer records.**

21 Each CMRS provider shall provide their ten thousand number groups to the PSAPs  
22 upon request. This information shall remain the property of the disclosing CMRS  
23 provider and shall be used only in providing emergency response services to 911 calls.

24 **"§ 62B-10. Proprietary information.**

25 All proprietary information submitted to the Board or the State Auditor shall be  
26 retained in confidence. Notwithstanding any other provision of law, no proprietary  
27 information submitted pursuant to this Chapter shall be subject to the North Carolina  
28 Public Records Law or subpoena, or otherwise released to any person other than to the  
29 submitting CMRS provider, the Board, and the independent, third-party auditor retained  
30 pursuant to G.S. 62B-6, without the express permission of the submitting CMRS  
31 provider. Further, proprietary information shall constitute trade secrets as defined by the  
32 North Carolina Trade Secrets Protection Act, G.S. 66-152. General information collected  
33 by the Board or the State Auditor shall be released or published only in aggregate  
34 amounts that do not identify or allow identification of numbers of subscribers or revenues  
35 attributable to an individual CMRS provider.

36 **"§ 62B-11. Limitation of liability.**

37 Notwithstanding any other provision of law, no CMRS provider, local exchange  
38 company, service supplier, PSAP, the Board or their employees, directors, officers, or  
39 agents, except in cases of wanton and willful misconduct, shall be liable for any damages  
40 in a civil action or subject to criminal prosecution resulting from death or injury to the  
41 person or from damage to property incurred by any person in connection with  
42 developing, adopting, implementing, maintaining, or operating any wireless 911 system  
43 or wireless Enhanced 911 system.

1 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

2 Wireless emergency telephone service shall be used solely for emergency  
3 communications by the public. Any person who knowingly uses or attempts to use  
4 wireless emergency telephone service for a purpose other than obtaining public safety  
5 assistance, or who knowingly uses or attempts to use wireless emergency telephone  
6 service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If  
7 the value of the CMRS charge or service obtained in a manner prohibited by this section  
8 exceeds one hundred dollars (\$100.00), the person is guilty of a Class 1 misdemeanor."

9 Section 2. G.S. 150B-1(c) reads as rewritten:

10 "(c) Full Exemptions. – This Chapter applies to every agency except:

- 11 (1) The North Carolina National Guard in exercising its court-martial  
12 jurisdiction.
- 13 (2) The Department of Health and Human Services in exercising its  
14 authority over the Camp Butner reservation granted in Article 6 of  
15 Chapter 122C of the General Statutes.
- 16 (3) The Utilities Commission.
- 17 (4) The Industrial Commission.
- 18 (5) The Employment Security Commission.
- 19 (6) The Wireless 911 Advisory Board."

20 Section 3. If any provision of this act or the application of this act to any  
21 person or circumstance is held invalid, that invalidity shall not affect other provisions or  
22 applications of this act that can be given effect without the invalid provision or  
23 application, and to this end the provisions of this act are severable.

24 Section 4. This act becomes effective 90 days after it becomes law.  
25 Appointments to the Wireless 911 Advisory Board created in G.S. 62B-2 shall be made  
26 within 30 days of the effective date of this act.