

JAN 25 2017

S.B. NO. **887**

# A BILL FOR AN ACT

RELATING TO ENHANCED 911 SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 138, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§138- Prepaid wireless E911 surcharge.** (a) A prepaid wireless E911 surcharge of 2.64 per cent shall be imposed on the prepaid wireless service amount purchased. The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or provider.

(b) The prepaid wireless E911 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring within the State. The amount of the prepaid wireless E911 surcharge shall be separately listed on an invoice, receipt, or other similar document that is provided to the consumer by the seller.

(c) A retail transaction that is transacted in person by a consumer at a seller's business location shall be treated as occurring within the State if the business location is within the State. A transaction shall also be treated as occurring within the State if the tangible personal property is shipped

1 and the customer's shipping address is within the State or, if  
2 there is no shipment, if the customer's billing address is  
3 within the State. If no tangible personal property is shipped  
4 and the customer's billing address is not known, the transaction  
5 shall be treated as occurring within the State if the consumer's  
6 mobile telephone is associated with an address within the State.

7 (d) A seller may deduct and retain three per cent of  
8 prepaid wireless E911 surcharges collected from consumers for  
9 administrative purposes.

10 (e) The seller shall remit monthly, quarterly, or semi-  
11 annually on a calendar year basis to the board the balance of  
12 prepaid wireless E911 surcharges collected from consumers not  
13 later than the twentieth day after the end of the filing period.  
14 The frequency of filing depends on the amount of prepaid  
15 surcharge fees paid during the year as follows:

16 (1) If the prepaid wireless service seller will collect  
17 more than \$4,000 prepaid wireless surcharge fees per  
18 year, the seller must file monthly;

19 (2) If the prepaid wireless service seller will collect  
20 \$4,000 or less per year, the seller may file  
21 quarterly; and

1       (3) If the prepaid wireless service seller will collect  
2           \$2,000 or less per year, the seller may file semi-  
3           annually.

4       (f) The board may require sellers to remit electronically  
5 the balance of the surcharges collected and shall establish  
6 registration and payment procedures.

7       (g) The amount of the prepaid wireless E911 surcharge that  
8 is collected by a seller from a consumer shall not be included  
9 in the base for measuring any tax, fee, surcharge, or other  
10 charge that is imposed by the State, any political subdivision  
11 of the State, or any governmental agency.

12       (h) If a minimal amount of prepaid wireless  
13 telecommunications service is sold with a prepaid wireless  
14 device for a single, non-itemized price, the seller shall not  
15 apply the surcharge imposed in subsection (a) to the  
16 transaction. For purposes of this subsection, a "minimal  
17 amount" means service of ten minutes or less or \$5 or less.

18       (i) The board shall establish procedures by which a seller  
19 of prepaid wireless telecommunications service may document that  
20 a sale is not a retail transaction.

21       (j) Section 138-9 shall apply to providers and sellers.

1       (k) No provider or seller shall be liable for damages to  
2 any person resulting from or incurred in connection with the  
3 provision of any lawful assistance to any investigative or law  
4 enforcement officer of the United States or any political  
5 subdivision, in connection with any lawful investigation or  
6 other law enforcement activity by such law enforcement officer.

7       (l) The prepaid wireless E911 surcharge imposed by this  
8 section shall be the only funding obligation imposed on prepaid  
9 wireless telecommunications service in the State for enhanced  
10 911 services. No other tax, fee, surcharge, or other charge for  
11 enhanced 911 services shall be imposed by the State, any  
12 political subdivision of the State, or any governmental agency,  
13 upon any provider, seller, or consumer with respect to the sale,  
14 purchase, use, or provision of prepaid wireless  
15 telecommunications service."

16       SECTION 2. Section 138-1, Hawaii Revised Statutes, is  
17 amended by adding seven new definitions to be appropriately  
18 inserted and to read as follows:

19       "Consumer" means a person or entity who purchases  
20 commercial mobile radio service or prepaid wireless  
21 telecommunications service in a retail transaction.

1       "Prepaid wireless E911 surcharge" means the surcharge that  
2       is required to be collected by a seller from a consumer in the  
3       amount established under section 138- .

4       "Prepaid wireless telecommunications service" means a  
5       wireless telecommunications service that is sold in  
6       predetermined (minutes usage or period of time) units or dollars  
7       that decline with use in a known amount and allows a caller to  
8       dial 911 to access the 911 system, a service that shall be paid  
9       for in advance.

10       "Provider" means a person or entity that provides  
11       commercial mobile radio service or prepaid wireless  
12       telecommunications service pursuant to a license issued by the  
13       Federal Communications Commission.

14       "Retail transaction" means the purchase of commercial  
15       mobile radio service or prepaid wireless telecommunications  
16       service from a seller for any purpose other than resale, which  
17       can be sourced to Hawaii, for example, seller's location,  
18       purchaser's delivery address, purchaser's address associated  
19       with the payment instrument, and the consumer's mobile telephone  
20       number, telephone area code, and postal zip code.

1       "Seller" means a person or entity who sells commercial  
2 mobile radio service or prepaid wireless telecommunications  
3 service to another person.

4       "Wireless telecommunications service" means commercial  
5 mobile radio service as defined by title 47 Code of Federal  
6 Regulations section 20.3."

7       SECTION 3. Section 138-3, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       **"§138-3 Enhanced 911 fund.** There is established outside  
10 the state treasury a special fund, to be known as the enhanced  
11 911 fund, to be administered by the board. The fund shall  
12 consist of amounts collected under [~~section~~] sections 138-4[~~-~~]  
13 and 138- . The board shall place the funds in an interest-  
14 bearing account at any federally insured financial institution,  
15 separate and apart from the general fund of the State. Moneys  
16 in the fund shall be expended exclusively by the board for the  
17 purposes of ensuring adequate funding to deploy and sustain  
18 enhanced 911 service, developing and funding future enhanced 911  
19 technologies, and funding expenses of administering the fund."

20       SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

S.B. NO. 887

1       SECTION 6. This Act, upon its approval, shall take effect  
2 on July 1, 2018.

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INTRODUCED BY:

*Mark W.*

5

BY REQUEST

**Report Title:**

Prepaid Wireless; Enhanced 911 Services

**Description:**

Establishes a prepaid wireless E911 surcharge of 2.64 per cent of prepaid wireless service purchased at the point of sale. Allows sellers to deduct and retain 3 per cent of the surcharge that is collected for administrative purposes. Requires the amounts collected by the Enhanced 911 Board to be placed in the Enhanced 911 Fund. Effective on July 1, 2018.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services

TITLE: A BILL FOR AN ACT RELATING TO ENHANCED 911 BOARD SERVICES.

PURPOSE: The purpose of this bill is to establish a prepaid wireless E911 surcharge imposed on wireless prepaid service connections.

MEANS: Add a new section to chapter 138, Hawaii Revised Statutes (HRS), and amend sections 138-1 and 138-3, HRS.

JUSTIFICATION: The Enhanced 911 Fund (the Fund) ensures adequate funding to deploy and sustain enhanced 911 services, as well as to develop and fund future enhanced 911 (E911) and Next Generation (NG911) technologies. Currently, a monthly surcharge of 66 cents per month is imposed upon each communications service connection for Voice over Internet Protocol (VoIP) and wireless phones except wireless prepaid mobile phone users and is remitted by the communications service providers to the Fund. Wireless prepaid mobile phone users will be assessed a surcharge fee of 2.64 percent of the prepaid gross sales at the point of sale and the retailer would be allowed to deduct and retain 3 percent from the fee to partially offset administrative costs. The 2.64 percent surcharge fee was based on information provided by the Cellular Telephone Industries Association (CTIA) on Hawaii's estimated prepaid market share and users, and the estimated annual recharges per prepaid user. The surcharge fee of 2.64 percent was the result of dividing the current monthly surcharge fee of \$0.66 for postpaid VoIP and wireless phones by the average transaction per prepaid user of \$25.

Under existing law, the surcharge fee is not imposed on wireless prepaid mobile phone

users despite the growth of prepaid phones. Approximately 40 states, Washington, D.C. and the U.S. Virgin Islands have already passed prepaid legislation in order to partially fund their required migration to Next Generation 911 technology. The Federal Communications Commission (FCC) continually imposes requirements upon the Public Safety Answering Points (PSAPs) (e.g., police, fire, and emergency services) to implement new 911 technologies such as Text-to-911, Multimedia Messaging (photo and video) to 911 and to accept Advanced Automatic Collision Notification data directly from vehicles involved in an accident, device barometric pressure data dispatchable location or vertical (z-axis) information as well as in-building access points (Wi-Fi hotspots) beacons (Bluetooth) in an effort to improve indoor location accuracy as well as to accept information from any devices on Internet-Protocol (IP) based networks; however, with each requirement there is no federal funding to assist with the costs of these new and emerging technologies. Wireless carriers dictate how the information is routed to the PSAP, but with devices using multiple protocols (SMS or SMPP text messaging, MMS or Wireless Application Protocol for multimedia), multiple layers of translation may be required in order to deliver this information quickly and accurately, at the PSAP's own expense. Should the PSAPs not comply with these new FCC requirements, they may be subject to fines.

Prepaid mobile phone users benefit from the 911 system and they should also participate equally in support of the 911 system through a surcharge as outlined in this bill. The estimated revenue of between \$1,000,000 - \$2,000,000 per year from prepaid mobile phone users will assist in ensuring the availability of funds for the regularly scheduled PSAP Computer Aided Dispatch (CAD) hardware and software upgrades which are

projected at \$4 million for each PSAP for a total of \$16 million during each five year period. In addition, the added funds will assist in the PSAPs' compliance with FCC Rules and Regulations for information privacy and security measures, maintenance of legacy systems and upgrades to computer hardware and software that support the aforementioned new and emerging technologies. After a period of time when collections of prepaid surcharge fees have stabilized and it has been determined that the needs of the PSAPs will be sustained by the Fund's current and future cash flow, the Board will determine whether an appropriate adjustment to the current surcharge fees is needed.

Impact on the public: The prepaid user will experience the cost of the added surcharge fees; however, the general public will benefit in that shared equity among all VoIP and wireless mobile phone users all paying their fair share for service received and to further ensuring quality of 911 service.

Impact on the department and other agencies:  
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	N/A.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2018.