

CHAPTER 149

GOVERNMENT - LOCAL

SENATE BILL 97-132

BY SENATORS Reeves, Bishop, Hernandez, Johnson, Matsunaka, Pascoe, Phillips, Rupert, and Schroeder;
also REPRESENTATIVES Tucker, Bacon, Epps, Lawrence, Mace, and Miller.

AN ACT

CONCERNING THE PROVISION OF EMERGENCY SERVICES VIA TELEPHONE, AND, IN CONNECTION THEREWITH, PROVIDING A FUNDING MECHANISM FOR WIRELESS 9-1-1 SERVICE AND GRANTING QUALIFIED IMMUNITY TO PROVIDERS OF EMERGENCY TELEPHONE SERVICE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 11 of title 29, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

29-11-100.5. Legislative declaration - provision of emergency service to wireless service users. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT DIALING 9-1-1 IS THE MOST EFFECTIVE AND FAMILIAR WAY THE PUBLIC HAS OF SEEKING EMERGENCY ASSISTANCE. THE AMENDMENTS TO THIS ARTICLE MADE IN SENATE BILL 97-132, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY, ARE INTENDED TO PROVIDE A FUNDING MECHANISM FOR 9-1-1 AND ENHANCED 9-1-1 SERVICE FOR WIRELESS SERVICE USERS. ENHANCED 9-1-1 PERMITS RAPID RESPONSE IN SITUATIONS WHERE CALLERS ARE UNABLE TO RELAY THEIR PHONE NUMBER OR LOCATION. PUBLIC SAFETY ANSWERING POINTS WILL NEED TO MAKE EXTENSIVE CHANGES IN, AND ADDITIONS TO, EXISTING EQUIPMENT TO PROVIDE ENHANCED 9-1-1 SERVICE TO WIRELESS SERVICE USERS. TO DO SO, PUBLIC SAFETY ANSWERING POINTS MUST HAVE THE RESOURCES TO PURCHASE AND UPDATE EQUIPMENT, SOFTWARE, AND TRAINING. A MECHANISM FOR RECOVERY OF COSTS REASONABLY INCURRED BY WIRELESS CARRIERS, SERVICE SUPPLIERS, AND BASIC EMERGENCY SERVICE PROVIDERS IN THE ACQUISITION AND TRANSMISSION OF 9-1-1 INFORMATION TO PUBLIC SAFETY ANSWERING POINTS IS NECESSARY TO ENSURE THAT WIRELESS SERVICE USERS RECEIVE THE SAME LEVEL OF 9-1-1 SERVICE AS WIRELINE SERVICE USERS. NOTHING IN THIS ARTICLE SHOULD BE CONSTRUED TO ALTER THE METHOD OF REGULATION OR DEREGULATION OF PROVIDERS OF TELECOMMUNICATIONS SERVICE AS SET FORTH IN ARTICLE 15 OF TITLE 40, C.R.S.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 29-11-101 (1), (2), (7), (8), and (9), Colorado Revised Statutes, 1986 Repl. Vol., are amended, and the said 29-11-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

29-11-101. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Emergency telephone charge" means a charge to pay the equipment costs, the installation costs, and the directly related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the public utilities commission, if applicable.~~ "BASIC EMERGENCY SERVICE PROVIDER" ("BESP") MEANS ANY PERSON AUTHORIZED BY THE COMMISSION TO UNDERTAKE THE AGGREGATION AND TRANSPORTATION OF 9-1-1 CALLS TO A PSAP.

(1.3) "COMMISSION" OR "PUBLIC UTILITIES COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO, CREATED IN SECTION 40-2-101, C.R.S.

(1.7) "EMERGENCY TELEPHONE CHARGE" MEANS A CHARGE TO PAY THE EQUIPMENT COSTS, THE INSTALLATION COSTS, AND THE DIRECTLY RELATED COSTS OF THE CONTINUED OPERATION OF AN EMERGENCY TELEPHONE SERVICE ACCORDING TO THE RATES AND SCHEDULES FILED WITH THE PUBLIC UTILITIES COMMISSION, IF APPLICABLE.

(2) "Emergency telephone service" means a telephone system utilizing the single three-digit number ~~911~~ 9-1-1 for reporting police, fire, medical, or other emergency situations.

(6.5) "PUBLIC SAFETY ANSWERING POINT" ("PSAP") MEANS A FACILITY EQUIPPED AND STAFFED ON A 24-HOUR BASIS TO RECEIVE AND PROCESS 9-1-1 CALLS.

(6.7) "RATES" MEANS THE RATES BILLED BY A SERVICE SUPPLIER PURSUANT TO TARIFFS, PRICE LISTS, OR CONTRACTS, WHICH RATES REPRESENT THE SERVICE SUPPLIER'S RECURRING CHARGES FOR EXCHANGE ACCESS FACILITIES OR THEIR EQUIVALENT, EXCLUSIVE OF ALL TAXES, FEES, LICENSES, OR SIMILAR CHARGES.

(7) "Service supplier" means any person providing exchange telephone services AND ANY PERSON PROVIDING TELECOMMUNICATIONS SERVICE VIA WIRELESS CARRIER to any service user in this state, EITHER DIRECTLY OR BY RESALE.

(8) "Service user" means any person who is provided exchange telephone service AND ANY PERSON WHO IS PROVIDED TELECOMMUNICATIONS SERVICE VIA WIRELESS CARRIER in this state.

(9) ~~"Tariff rates" means the rates billed by a service supplier as stated in the service supplier's tariffs which rates have been approved by the public utilities commission and which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses, or similar charges.~~

(10) "TELECOMMUNICATIONS SERVICE" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (29), C.R.S.

(11) "WIRELESS AUTOMATIC LOCATION IDENTIFICATION" ("WIRELESS ALI") MEANS THE AUTOMATIC DISPLAY, ON EQUIPMENT AT THE PSAP, OF THE LOCATION OF THE WIRELESS SERVICE USER INITIATING A 9-1-1 CALL TO THE PSAP.

(12) "WIRELESS AUTOMATIC NUMBER IDENTIFICATION" ("WIRELESS ANI") MEANS THE MOBILE IDENTIFICATION NUMBER OF THE WIRELESS SERVICE USER INITIATING A 9-1-1 CALL TO THE PSAP.

(13) "WIRELESS COMMUNICATIONS ACCESS" MEANS THE RADIO EQUIPMENT AND ASSIGNED MOBILE IDENTIFICATION NUMBER USED TO CONNECT A WIRELESS CUSTOMER TO A WIRELESS CARRIER FOR TWO-WAY INTERACTIVE VOICE OR VOICE-CAPABLE SERVICES.

(14) "WIRELESS CARRIER" MEANS A CELLULAR LICENSEE, A PERSONAL COMMUNICATIONS SERVICE LICENSEE, AND CERTAIN SPECIALIZED MOBILE RADIO PROVIDERS DESIGNATED AS COVERED CARRIERS BY THE FEDERAL COMMUNICATIONS COMMISSION IN 47 C.F.R. 20.18 AND ANY SUCCESSOR TO SUCH RULE.

SECTION 3. 29-11-102 (1) (b), (2), (3), and (7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

29-11-102. Imposition of charge - liability of user for charge - collection - uncollected amounts. (1) (b) If the emergency telephone service is to be provided for territory which is included in whole or in part in the jurisdiction of the governing bodies of two or more public agencies which are the primary providers of emergency fire fighting, law enforcement, ambulance, emergency medical, or other emergency services, the agreement for such service with a ~~service-supplier~~ **BESP** or any equipment supplier shall be entered into by each such governing body unless any such body expressly excludes itself therefrom. Any such agreement shall provide that each governing body ~~which~~ **THAT** is a customer of such service shall make payment therefor from charges imposed under paragraph (a) of this subsection (1), unless all such customers make payments therefor from general revenues. Nothing in this paragraph (b) shall be construed to prevent two or more such governing bodies from entering into a contract under part 2 of article 1 of this title and to establish a separate legal entity thereunder to enter into such an agreement as the customer of the ~~service supplier~~ **BESP** or any equipment supplier.

(2) (a) The governing body is hereby authorized, by ordinance in the case of cities and by resolution in the case of counties or special districts, to impose such charge in an amount not to exceed seventy cents per month **PER EXCHANGE ACCESS FACILITY OR PER WIRELESS COMMUNICATIONS ACCESS** in those portions of the governing body's jurisdiction for which emergency telephone service will be provided.

(b) In the event the governing body determines that a charge in excess of seventy cents per month is necessary in order to provide continued and adequate emergency telephone service, the governing body shall obtain from the public utilities commission approval of such higher charge before the imposition thereof.

(c) REGARDLESS OF THE LEVEL AT WHICH THE CHARGE IS SET, THE AMOUNT OF THE CHARGE IMPOSED PER EXCHANGE ACCESS FACILITY AND THE AMOUNT OF THE CHARGE IMPOSED PER WIRELESS COMMUNICATIONS ACCESS SHALL BE EQUAL.

(d) The proceeds of the charge shall be utilized to pay for emergency telephone service, as set forth in section 29-11-104 (2), and may be imposed at any time ~~subsequent to the execution of an agreement with the provider of such service at the discretion of the~~ AFTER THE governing body REQUESTS SUCH SERVICE FROM THE PROVIDER OR, IN THE CASE OF WIRELESS CARRIERS, AT ANY TIME AFTER THE GOVERNING BODY REQUESTS WIRELESS ANI OR WIRELESS ALI FROM THE WIRELESS CARRIER.

(3) ~~No such charge shall be imposed upon more than one hundred exchange access facilities or their equivalent per customer billing.~~ Such charge shall be imposed only upon service users WHOSE ADDRESS IS in those portions of the governing body's jurisdiction for which emergency telephone service shall be provided; however, such charge shall not be imposed upon any state or local governmental entity.

(7) Any charge imposed under the authority of this article shall be collected insofar as practicable at the same time as, and along with, the charges for the ~~tariff~~ rate in accordance with the regular billing practice of the service supplier. The ~~tariff~~ rates determined by or stated on the billing of the service supplier are presumed to be correct if such charges were made in accordance with the service supplier's business practices. The presumption may be rebutted by evidence which establishes that an incorrect ~~tariff~~ rate was charged.

SECTION 4. 29-11-103 (3), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

29-11-103. Remittance of charge to governing body - administrative fee - establishment of rate of charge. (3) (a) At least once each calendar year, the governing body shall establish a rate of charge, not to exceed the amount authorized, that together with any surplus revenues carried forward will produce sufficient revenues to fund the expenditures authorized by this article. Amounts collected in excess of such necessary expenditures within a given year shall be carried forward to subsequent years AND SHALL BE USED IN ACCORDANCE WITH SECTION 29-11-104 (2). The governing body shall make its determination of such rate each year no later than September 1 and shall fix the new rate to take effect commencing with the first billing period of each customer on or following the next January 1. Immediately upon its making such determination and fixing such rate, the governing body shall publish in its minutes the new rate, and it shall notify by registered mail every service supplier at least ninety days before such new rate will become effective.

(b) The governing body may, at its own expense, require an annual audit of the service supplier's books and records concerning the collection and remittance of the charge authorized by this article. PUBLIC INSPECTION OF THE AUDIT AND OF DOCUMENTS REVIEWED IN THE AUDIT SHALL BE SUBJECT TO SECTION 24-72-204, C.R.S.

SECTION 5. 29-11-104 (2) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 29-11-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

29-11-104. Agreements or contracts for emergency telephone service - use of funds collected. (2) (a) (I) Except as otherwise provided in paragraphs (b) and (c) of this subsection (2), funds collected from the ~~charge~~ CHARGES imposed pursuant to this article shall be spent solely to pay for: ~~the equipment costs, for the installation costs, and for the monthly recurring charges billed by the service supplier for the emergency telephone service, and,~~

(A) COSTS OF EQUIPMENT AND INSTALLATION THEREOF;

(B) MONTHLY RECURRING CHARGES OF SERVICE SUPPLIERS AND BASIC EMERGENCY SERVICE PROVIDERS (BESPs) FOR THE EMERGENCY TELEPHONE SERVICE, WHICH CHARGES SHALL BE BILLED BY THE BESP TO THE GOVERNING BODY OF EACH JURISDICTION IN WHICH IT PROVIDES SERVICE;

(C) REIMBURSEMENT OF THE COSTS OF WIRELESS CARRIERS AND BESPs FOR EQUIPMENT CHANGES NECESSARY FOR THE PROVISION OR TRANSMISSION OF WIRELESS ANI OR WIRELESS ALI TO A PUBLIC SAFETY ANSWERING POINT; AND

(D) OTHER COSTS, EXCLUDING PERSONNEL COSTS, DIRECTLY RELATED TO THE CONTINUED OPERATION OF THE EMERGENCY TELEPHONE SERVICE.

(II) If moneys are available after ~~such charges~~ THE COSTS AND CHARGES ENUMERATED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) are fully paid, such funds may be expended for emergency medical services provided by telephone.

(b) In a county with a population of fifty thousand or less that has entered into a cooperative intergovernmental agreement for the provision of emergency telephone service, funds collected from the ~~charge~~ CHARGES imposed pursuant to this article may also be spent for personnel expenses necessarily incurred for a public safety answering point. As used in this paragraph (b), "personnel expenses necessarily incurred" includes only expenses incurred for:

(I) Persons employed to take emergency telephone calls and ~~relay them to the appropriate dispatcher~~ DISPATCH THEM APPROPRIATELY; and

(II) Persons employed to maintain the computer data base of the public safety answering point.

(c) For purposes of paragraph (b) of this subsection (2), the population of a county shall be determined by the most recent available estimate by the division of planning in the department of local affairs.

(3) Funds collected from the ~~charge~~ CHARGES IMPOSED pursuant to this article shall be credited to a cash fund, apart from the general fund of the public agency, for payments pursuant to subsection (2) of this section. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments during any succeeding year; except that, if such emergency telephone service is discontinued, moneys remaining in the fund after all payments to the service ~~supplier~~ SUPPLIERS, BASIC EMERGENCY SERVICE PROVIDERS, and all equipment suppliers pursuant to subsection (2) of this section have been made shall be transferred to the general fund of the public agency or proportionately to the general fund of each participating

public agency.

(4) A WIRELESS CARRIER OR BESP THAT PROVIDES WIRELESS ALI OR WIRELESS ANI SERVICES AT THE REQUEST OF A GOVERNING BODY, AND PURSUANT TO A CONTRACT BETWEEN THE WIRELESS CARRIER OR BESP AND THE GOVERNING BODY, SHALL BE REIMBURSED BY SUCH GOVERNING BODY OR ITS DESIGNEE FOR THE COSTS INCURRED IN MAKING ANY EQUIPMENT CHANGES NECESSARY FOR THE PROVISION OF SUCH SERVICES.

SECTION 6. Article 11 of title 29, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

29-11-105. Immunity of providers. NO BASIC EMERGENCY SERVICE PROVIDER OR SERVICE SUPPLIER AND NO EMPLOYEE OR AGENT THEREOF SHALL BE LIABLE TO ANY PERSON OR ENTITY FOR INFRINGEMENT OR INVASION OF THE RIGHT OF PRIVACY OF ANY PERSON CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY ANY ACT OR OMISSION IN CONNECTION WITH THE INSTALLATION, OPERATION, MAINTENANCE, REMOVAL, PRESENCE, CONDITION, OCCASION, OR USE OF EMERGENCY SERVICE FEATURES, AUTOMATIC NUMBER IDENTIFICATION (ANI), OR AUTOMATIC LOCATION IDENTIFICATION (ALI) SERVICE AND THE EQUIPMENT ASSOCIATED THEREWITH, INCLUDING WITHOUT LIMITATION THE IDENTIFICATION OF THE TELEPHONE NUMBER, ADDRESS, OR NAME ASSOCIATED WITH THE TELEPHONE USED BY THE PARTY OR PARTIES ACCESSING 9-1-1 SERVICE, WIRELESS ANI SERVICE, OR WIRELESS ALI SERVICE, AND THAT ARISE OUT OF THE NEGLIGENCE OR OTHER WRONGFUL ACT OF THE PROVIDER OR SUPPLIER, THE CUSTOMER, THE GOVERNING BODY OR ANY OF ITS USERS, AGENCIES, OR MUNICIPALITIES, OR THE EMPLOYEE OR AGENT OF ANY OF SAID PERSONS AND ENTITIES. IN ADDITION, NO BASIC EMERGENCY SERVICE PROVIDER OR SERVICE SUPPLIER OR ANY EMPLOYEE OR AGENT THEREOF SHALL BE LIABLE FOR ANY DAMAGES IN A CIVIL ACTION FOR INJURIES, DEATH, OR LOSS TO PERSON OR PROPERTY INCURRED AS A RESULT OF ANY ACT OR OMISSION OF SUCH PROVIDER, SERVICE SUPPLIER, EMPLOYEE, OR AGENT IN CONNECTION WITH DEVELOPING, ADOPTING, IMPLEMENTING, MAINTAINING, ENHANCING, OR OPERATING AN EMERGENCY TELEPHONE SERVICE UNLESS SUCH DAMAGE OR INJURY WAS INTENTIONALLY CAUSED BY OR RESULTED FROM GROSS NEGLIGENCE OF THE PROVIDER, SUPPLIER, EMPLOYEE, OR AGENT.

SECTION 7. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1997