

HOUSE No. 643

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a prepaid wireless E911 surcharge.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael A. Costello</i>	<i>1st Essex</i>	<i>1/19/2011</i>
<i>David M. Torrisi</i>	<i>14th Essex</i>	<i>2/4/2011</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>2/4/2011</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>2/4/2011</i>

HOUSE No. 643

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 643) of Michael A. Costello and others relative to establishing a prepaid wireless enhanced 911 surcharge. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing a prepaid wireless E911 surcharge.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 18 of chapter 6A, as most recently amended by Chapter 223 of the
2 Laws of 2008, is hereby further amended by striking out section 18A, as so appearing, and
3 inserting in place thereof the following section:-

4 Section 18A. In this section, and in sections 18B to 18J, inclusive, of this chapter, and in
5 section 14A of chapter 166, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:

7 “Automatic location identification”, an enhanced 911 service capability that allows for
8 the automatic display of information relating to the geographical location of the communication
9 device used to place a 911 call.

10 “Automatic number identification”, an enhanced 911 service capability that allows for the
11 automatic display of a telephone number used to place or route a 911 call.

12 “Commission”, the state 911 commission.

13 “Communication services”, includes any of the following: (a) the transmission,
14 conveyance or routing of real-time, two-way voice communications to a point or between or
15 among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline,
16 wireless or other medium or method, regardless of the protocol used; (b) the ability to provide
17 two-way voice communication on the public switched network; (c) wireless enhanced 911
18 service; (d) wireline enhanced 911 service; (e) interconnected VoIP provider service as defined
19 by the regulations of the FCC regulations; (f) IP -enabled service; or (g) prepaid wireless service.

20 “Communication service provider”, an entity that provides communication services to a
21 subscriber.

22 ”Consumer”, a person who purchases prepaid wireless telecommunications service in a
23 retail transaction.

24 “Department”, the state 911 department.

25 “Director”, the executive director of the state 911 department.

26 “Emergency medical dispatch”, the management of requests for emergency medical
27 assistance by utilizing a system of: (a) tiered response or priority dispatching of emergency
28 medical resources based on the level of medical assistance needed by the victim; and (b) pre-
29 arrival first aid or other medical instructions given by trained personnel responsible for receiving
30 911 calls and directly dispatching emergency response services.

31 “Enhanced 911 Fund”, the fund established under section 35JJ of chapter 10.

32 “Enhanced 911 service provider”, any entity that provides 1 or more of the following 911
33 elements: network, database or PSAP customer premises equipment.

34 “Enhanced 911 service”, a service consisting of communication network, database and
35 equipment features provided for subscribers of communication services enabling such
36 subscribers or consumers of prepaid wireless telecommunications service to reach a PSAP by
37 dialing the digits 911, or by other means approved by the department, that directs calls to
38 appropriate PSAPs based on selective routing and provides the capability for automatic number
39 identification and automatic location identification.

40 “Enhanced 911 network features”, the components of enhanced 911 service that provide
41 selective routing, automatic number identification and automatic location identification.

42 “Enhanced 911 systems”, a distinct entity or geographical segment in which enhanced
43 911 service is provided, consisting of network routing elements serving as a control office and
44 trunking connecting all central offices within a geographical segment, and including PSAPs and
45 network used to deliver location data to PSAPs from a data base.

46 “FCC”, the Federal Communications Commission.

47 “FCC order”, all orders issued by the FCC under the proceeding entitled “Revision of the
48 Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems”
49 (CC Docket No. 94-102; RM 8143), or any successor proceeding, including all other criteria
50 established therein, regarding the delivery of wireless enhanced 911 service by a wireless carrier,
51 and all orders issued by the FCC under the proceeding entitled “In the Matter of IP-Enabled
52 Services; E911 Requirements for IP-Enabled Service Providers”(WC Docket No 05-196), or any
53 successor proceeding, including all other criteria established therein, regarding the delivery of
54 enhanced 911 service by an IP-enabled service provider.

55 “Governmental body” shall include any governmental body as defined in section 11A of
56 chapter 30A or section 23A of chapter 39.

57 “Interconnected VoIP service”, voice over the internet protocol services as defined by the
58 FCC in 47 CFR 9.3.

59 “IP-enabled service”, a service, device or application which makes use of Internet
60 Protocol, or IP, and capable of entering the digits 911, or by other means as approved by the
61 department, for the purposes of interconnecting users to the enhanced 911 system including, but
62 not limited to, voice over IP and other services, devices, or applications provided through or
63 using wireline, cable, wireless, or satellite facilities or any other facility that may be provided in
64 the future. “Limited secondary PSAP”, a PSAP equipped, at a minimum, with automatic number
65 identification and automatic location identification display or printout capability. It receives 911
66 calls only if transferred from the primary PSAP. Data sent to a limited secondary PSAP cannot
67 be re-routed to another location and may not necessarily be transmitted simultaneously with the
68 voice call.

69 “Local exchange service”, telephone exchange lines or channels that provide local access
70 from the premises of a subscriber in the commonwealth to the local telecommunications network
71 to effect the transfer of information.

72 “Network components”, any software or hardware for a control switch, other switch
73 modification, trunking or any components of a computer storage system or database used for
74 selective routing of 911 calls, automatic number identification and automatic location
75 identification, including a PSAP.

76 “Next generation 911”, an enhanced 911 system that incorporates the handling of all 911
77 calls and messages, including those using IP-enabled services or other advanced communications
78 technologies in the infrastructure of the 911 system itself.

79 “Prepaid wireless telecommunications service”, a commercial mobile radio service as
80 defined by section 20.3 of title 47 of the Code of Federal Regulations, as amended, that allows a
81 caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold
82 in predetermined units or dollars of which the number declines with use in a known amount.
83 Such predetermined units may be measured in units of time, not to exceed one month.

84 “Prepaid wireless telecommunications service provider”, a person that provides prepaid
85 wireless telecommunications service pursuant to a license issued by the Federal Communications
86 Commission.

87 “PSAP customer premises equipment”, enhanced 911 call processing equipment located
88 at a PSAP.

89 “Primary PSAP”, a PSAP equipped with automatic number identification and automatic
90 location identification displays, and is the first point of reception of a 911 call. It serves the
91 municipality in which it is located.

92 “Private safety department”, an entity, except for a municipality or a public safety
93 department, that provides emergency police, fire, ambulance or medical services.

94 “Public safety answering point” or “PSAP”, a facility assigned the responsibility of
95 receiving 911 calls and, as appropriate, directly dispatching emergency response services or

96 transferring or relaying emergency 911 calls to other public or private safety agencies or other
97 PSAPs.

98 “Public safety department”, a functional division of a municipality or a state that provides
99 fire fighting, law enforcement, ambulance, medical or other emergency services.

100 “Regional emergency communication center”, a facility operated by or on behalf of 2 or
101 more municipalities or governmental bodies, or combination thereof, as approved by the
102 department, that enter into an agreement for the establishment and provision of regional dispatch
103 and coordination of emergency services for all such municipalities or governmental bodies
104 including, but not limited to, a regional PSAP that provides enhanced 911 service and police, fire
105 protection, and emergency medical services dispatch, including services provided by a private
106 safety department. The regional PSAP portion of the center shall be equipped with automatic
107 number identification and automatic location identification displays, as approved by the
108 department, and is the first point of reception of a 911 call.

109 “Regional PSAP”, a PSAP operated by or on behalf of 2 or more municipalities or
110 governmental bodies, or combination thereof, approved by the department, for the operation of
111 enhanced 911 call taking and call transfer activities. A regional PSAP may also be engaged in,
112 by agreement, the dispatching or control of public safety resources serving some or all of the
113 municipalities or governmental bodies that comprise the regional PSAP, including where
114 services are provided by a private safety department. If the regional PSAP serves all such
115 municipalities or governmental bodies for the operation of enhanced 911 call taking and call
116 transfer activities and dispatch services including where dispatch services are provided by a
117 private safety department, it shall be considered a regional emergency communication center for

118 the purposes of section 18B. The regional PSAP shall be equipped with automatic number
119 identification and automatic location identification displays, as approved by the department, and
120 is the first point of reception of a 911 call.

121 “Regional secondary PSAP”, a facility operated by or on behalf of 3 or more
122 municipalities or governmental bodies, or a combination thereof, approved by the department,
123 that enter into an agreement for the establishment and provision of regional dispatch and
124 coordination of either police, fire protection or emergency medical services, or any combination
125 thereof. A regional secondary PSAP is equipped with automatic number identification and
126 automatic location identification displays. It receives 911 calls only when transferred from a
127 primary or regional PSAP or on an alternative routing basis when calls cannot be completed to
128 the primary or regional PSAP.

129 “Retail transaction”, the purchase of prepaid wireless telecommunications service from a
130 seller for any purpose other than resale.

131 “Ringling PSAP”, a PSAP equipped for receipt of voice communications only, and may
132 not operate 24 hours each day. It receives 911 calls that are transferred from the primary PSAP.

133 “Secondary PSAP”, a PSAP equipped with automatic number identification and
134 automatic location identification displays. It receives 911 calls only when they are transferred
135 from the primary PSAP or on an alternative routing basis when calls cannot be completed to the
136 primary PSAP.

137 “Selective routing”, the method to direct 911 calls to the appropriate PSAP using a call
138 routing database derived from the geographical location from which the call originated.

139 ”Seller”, a person who sells prepaid wireless telecommunications service to another
140 person.

141 “Subscriber”, a person who uses communication services; provided, however, that such
142 term does not include a consumer of prepaid wireless telecommunications service.

143 “Telephone company”, a person, firm, corporation, association or joint stock association
144 or company, as defined in chapter 159 , furnishing or rendering local telephone exchange
145 service.

146 “VoIP or voice over internet protocol”, a type of IP-enabled service that allows for the
147 two-way real time transmission of voice communications and has access to the public switched
148 network.

149 “Wholesale”, sales by the prepaid wireless telephone service provider to a non-prepaid
150 wireless telephone service provider that sells service on behalf of the prepaid wireless telephone
151 service provider.

152 “Wireless carrier”, a commercial mobile radio service, as defined in 47 U S C 332(d),
153 including resellers and prepaid wireless telecommunications service providers.

154 “Wireless enhanced 911 service”, the service required to be provided by wireless carriers
155 under, and governed by, FCC order.

156 “Wireless state police PSAP”, a state police facility assigned the responsibility of
157 primarily or entirely receiving wireless 911 calls and, as appropriate, directly dispatching
158 emergency response services or transferring or relaying emergency 911 calls to other public or
159 private safety departments or other PSAPs.

160 “Wireline carrier”, an incumbent local exchange carrier or local exchange carrier
161 operating in the commonwealth, or a telephone company, or any other person, corporation or
162 entity that provides local exchange service.

163 “Wireline enhanced 911 service”, service provided by a wireline carrier that connects a
164 subscriber dialing or entering the digits 911 to a PSAP.

165 SECTION 2. Said chapter 6A is hereby further amended by striking out section 18H, as
166 so appearing, and inserting in place thereof the following section:-

167 Section 18H. (a1) There shall be imposed on each subscriber whose communication
168 services are capable of accessing and utilizing an enhanced 911 system, a surcharge in the
169 amount of 75 cents per month for expenses associated with services provided under sections 18A
170 to 18J, inclusive, and sections 14A and 15E of chapter 166. For wireline enhanced 911 service,
171 the charge shall be imposed on each voice grade exchange telephone line of business and
172 residence customers within the commonwealth, but the surcharge applicable to centrex service
173 and ISDN primary rate interface service shall be based on an equivalency ratio provided to each
174 private branch exchange trunk. For wireless enhanced 911 service, the charge shall be imposed
175 on the subscriber per their place of primary use as required pursuant to the Mobile
176 Telecommunications Sourcing Act, Title 4 of US Code section 116 to 124. For interconnected
177 VoIP provider service, the charge shall be imposed on each voice grade telephone line of
178 business and residence customers within the commonwealth, but the surcharge applicable to such
179 interconnected VoIP provider service that is comparable to centrex service and ISDN primary
180 rate interface service associated with wireline enhanced 911 service shall be based on an
181 equivalency ratio similar to that used for wireline enhanced 911 service. For IP-enabled service,

182 the charge shall be imposed based on the subscriber's billing address in the commonwealth
183 except for interconnected VoIP provider service, unless a different method is approved by the
184 department.

185 The surcharge shall be collected by the communication service provider and shall be
186 shown on the subscriber's bill as "Disability Access/Enhanced 911 Service Surcharge", or an
187 appropriate abbreviation. The surcharge shall not be subject to sales or use tax. The subscriber
188 shall be liable for the surcharge imposed under this section, and the communication service
189 provider shall not be financially liable for surcharges billed on behalf of the commonwealth but
190 not collected from subscribers. Partial subscriber payments shall be first applied to outstanding
191 communication service provider charges.

192 (a2) 1. There shall be imposed a prepaid wireless E911 surcharge. The prepaid wireless
193 E911 surcharge shall be 75 cents per retail transaction or, on and after the effective date of an
194 adjusted amount per retail transaction that is established under paragraph 6 of this subsection,
195 such adjusted amount.

196 2. The prepaid wireless E911 surcharge shall be collected by the seller from the consumer
197 with respect to each retail transaction occurring in this state. The amount of the prepaid wireless
198 E911 surcharge shall be either separately stated on an invoice, receipt, or similar document that
199 is provided to the consumer by the seller, or otherwise disclosed to the consumer.

200 3. For purposes of paragraph 2 of this subsection, a retail transaction that is effected in
201 person by a consumer at a business location of the seller shall be treated as occurring in this state
202 if that business location is in this state, and any other retail transaction shall be treated as

203 occurring in this state if the retail transaction is treated as occurring in this state under Section 1
204 of Chapter 64H of Title IX of the General Laws.

205 4. The prepaid wireless E911 charge is the liability of the consumer and not of the seller
206 or of any prepaid wireless telecommunications service provider, except that the seller shall be
207 liable to remit all prepaid wireless E911 surcharges that the seller collects from consumers as
208 provided in this subsection, including all such charges that the seller is deemed to collect where
209 the amount of the charge has not been separately stated on an invoice, receipt, or other similar
210 document provided by the consumer to the seller.

211 5. The amount of the prepaid wireless E 911 charge that is collected by a seller from a
212 consumer, if such amount is separately stated on an invoice, receipt, or other similar document
213 provided to the consumer by the seller, shall not be included in the base for measuring any tax,
214 fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state,
215 or any intergovernmental entity.

216 6. The prepaid wireless E911 charge shall be proportionately increased or reduced, as
217 applicable, upon any change to the surcharge imposed under subsection (a1) of this section as
218 provided under subsection (b) of this section. Such increase or reduction shall be effective on
219 the effective date of the change to the charge imposed under subsection (a1) or, if later, the first
220 day of the first calendar month to occur at least 60 days after implementation of the change to the
221 charge imposed under paragraph (a1). The Department of Revenue shall provide not less than 30
222 days of advance notice of such increase or reduction in its public website.

223 7. Prepaid wireless E911 surcharges collected by sellers shall be remitted to the
224 Department of Revenue at the times and in the same manner as the tax imposed under Chapter

225 64H of Title IX of the General Laws. The Department of Revenue shall establish registration
226 and payment procedures that substantially coincide with the registration and payment procedures
227 that apply to Sections 3 and 7 of Chapter 64H of the Title IX of the General Laws.

228 8. A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless
229 E911 surcharges that are collected by the seller from consumers.

230 9. The audit and appeal procedures applicable under Chapter 64H of Title IX of the
231 General Laws shall apply to prepaid wireless E911 charges.

232 10. The Department of Revenue shall establish procedures by which a seller of prepaid
233 wireless telecommunications service may document that a sale is not a retail transaction. Such
234 procedures shall substantially coincide with the procedures for documenting sale for resale
235 transactions under section 8 of Chapter 64H of Title IX of the General Laws.

236 11. The Department of Revenue shall transfer all remitted prepaid wireless E911
237 surcharges to the state treasurer for deposit in the Enhanced 911 Fund for use as provided in this
238 section within 30 days of receipt after deducting an amount, not to exceed two percent (2%) of
239 remitted charges, that shall be retained by the Department of Revenue to reimburse its direct
240 costs of administering the collection and remittance of prepaid wireless E911 surcharges.

241 12. No prepaid wireless telecommunications service provider or seller shall be liable for
242 damages to any person resulting from or incurred in connection with the provision of, or failure
243 to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number,
244 address, location, or name associated with any person or device that is accessing or attempting to
245 access 911 or E911 service.

246 13. In addition to the provisions of paragraph 12 of this subsection, each prepaid wireless
247 telecommunications provider and seller shall be covered by the liability protections of subsection
248 (g) of this section.

249 14. The prepaid wireless E911 surcharge imposed by this subsection shall be the only
250 E911 funding obligation imposed with respect to prepaid wireless telecommunications service in
251 this state and not tax, fee, surcharge, or other charge shall be imposed by this state, any political
252 subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any
253 prepaid wireless telecommunications service provider, seller, or consumer with respect to the
254 sale, purchase, use, or provision of prepaid wireless telecommunications service.

255 (b) The department may petition the department of telecommunications and cable for an
256 adjustment in the surcharge established in subsection (a1). The department of
257 telecommunications and cable shall be responsible for establishing the new surcharge, and all
258 future surcharges, upon petition of the department. The department of telecommunications and
259 cable, at its discretion but not more than once per calendar year, may investigate the prudence of
260 the department's revenue and expenditures for the purpose of recalculating the surcharge, and
261 may hire experts to assist in its investigation. The reasonable cost of such experts shall be
262 charged to the Enhanced 911 Fund, but in no event shall such cost exceed \$200,000, which may
263 be adjusted to reflect changes in the consumer price index. The department of
264 telecommunications and cable shall conduct its review and issue a decision within 90 days of the
265 date of the commencement of the investigation, but the surcharge shall be deemed approved if
266 the department of telecommunications and cable does not issue its decision within such 90 days.
267 The department of telecommunications and cable shall adopt rules that provide for the funding of
268 prudently incurred expenses associated with services provided by sections 18A to 18J, inclusive,

269 and sections 14A and 15E of chapter 166, by means of the surcharge. The department shall
270 report annually to the department of telecommunications and cable on the financial condition of
271 the Enhanced 911 F und and on the department's assessment of new developments affecting the
272 enhanced 911 system. The report shall be submitted to the department of telecommunications
273 and cable within 60 days of the end of each fiscal year. The department of telecommunications
274 and cable shall file an annual report with the clerks of the house of representatives and the senate
275 relative to the financial condition of the Enhanced 911 F und.

276 (c) The department shall seek the approval of the department of telecommunications and
277 cable for projected total expenditures that exceed total expenditures of the previous fiscal year by
278 10 per cent or more. The department of telecommunications and cable may investigate the
279 reasonableness of the expenditures and shall conduct its review and issue a decision within 90
280 days from the date the department files its request for approval, but the request for approval shall
281 be deemed approved if the department of telecommunications and cable does not issue its
282 decision within such 90 days. The department of telecommunications and cable shall notify the
283 department of its intent to investigate within 20 days of the date the department files its request
284 for approval. The department's request for approval shall be deemed approved in the absence of
285 the department of telecommunication and cable's notification to the department of its intent to
286 investigate. If the department of telecommunication and cable notifies the department that it
287 intends to investigate an expenditure, the department of telecommunications and cable may hire
288 experts to assist in its investigation. The reasonable cost of the experts shall be charged to the
289 Enhanced 911 F und, but in no event shall such cost exceed \$200,000, which may be adjusted to
290 reflect changes in the consumer price index.

291 (d) Each communication service provider shall remit the surcharge revenues collected
292 from its subscribers to the state treasurer for deposit in the Enhanced 911 Fund. The surcharge
293 revenues shall be expended for the administration and programs of the department including, but
294 not limited to, salaries, enhanced 911 training programs, enhanced 911 public education
295 programs, the creation of PSAP customer premises equipment for, and maintenance of, primary
296 and regional PSAPs, the programs mandated by section 18B and sections 14A and 15E of
297 chapter 166, and for the implementation and administration of enhanced 911 service in the
298 commonwealth.

299 (e) Each communication service provider required to remit surcharge revenues shall
300 submit to the department and the department of telecommunications and cable information on its
301 business entity including, but not limited to, name, business address, contact person and the
302 telephone number, fax number and e-mail address of such contact person. Each such provider
303 shall update this information annually.

304 (f) Each communication service provider shall report to the department on a monthly
305 basis the total surcharge revenues collected from its subscribers during the preceding month, the
306 total uncollected surcharge revenues from subscribers during the preceding month, the total
307 amount billed to the department for administration costs to cover the expenses of billing,
308 collecting and remitting the surcharge during the preceding month, and the total amount billed to
309 the department for non-recurring and recurring costs associated with any service, operation,
310 administration or maintenance of enhanced 911 service during the preceding month. Such
311 monthly report shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or
312 section 10 of chapter 66.

313 (g) A communication service provider shall forward to any PSAP or any other answering
314 point equipped for enhanced 911 service, or upon request consistent with federal law, to a
315 municipal, state, or federal law enforcement agency, the department of telecommunications and
316 cable, the FCC or the department, the telephone number and street address or location of any
317 telephone used to place a 911 call, and any other call data or information required by the FCC to
318 be transmitted to a PSAP.

319 Subscriber information or data provided in accordance with this section shall be used,
320 consistent with federal law, only for the purpose of responding to emergency calls, administering
321 and operating the enhanced 911 system and providing enhanced 911 service, or for use in any
322 ensuing investigation or prosecution, including the investigation of false or intentionally
323 misleading reports of incidents requiring emergency service. No communication service provider
324 or officers, directors, employees, vendors or agents shall be liable in any action to any person for
325 releases of information authorized by this section or for civil action resulting from or caused by
326 such providers for participation or omissions in the development, installation, operation,
327 maintenance, performance or provision of enhanced 911 service except for wanton or willful
328 misconduct. Release to or use by any person of a communication service provider's subscriber
329 information or data for any use other than the purposes enumerated in this subsection shall be
330 prohibited. Notwithstanding any general or special law to the contrary, such information or data
331 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or section 10 of
332 chapter 66, except that aggregated information that does not identify or effectively identify
333 specific subscriber information or data may be made public.

334 (h) The department shall examine call volumes of all primary, regional and regional
335 secondary PSAPs, and the population changes of the municipalities they serve, and may use such
336 information in determining the disbursement of funds as set forth in section 18B.

337 SECTION 3. This act shall take effect on July 1, 2012.