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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 3208

(By Delegates Trump, Michael, Mahan, Campbell and Ashley)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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**E N R O L L E D**

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FOR

**H. B. 3208**

(BY DELEGATES TRUMP, MICHAEL,  
MAHAN, CAMPBELL AND ASHLEY)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating to the wireless enhanced 911 fee; raising the fee; earmarking ten cents to the fee for the State Police; earmarking one million dollars of the fee for the construction of wireless towers; creating the Enhanced 911 Wireless Tower Assistance Fund to be administered by the Public Service Commission; authorizing the Commission to provide loans and matching grants; use of towers for emergency services; authorizing the Commission to promulgate rules and emergency rules; adjusting the formula by which the Public Service Commission distributes wireless enhanced 911 fees to the counties; and allowing counties which consolidate government services to receive one percent of fee for each county consolidated.

*Be it enacted by the Legislature of West Virginia:*

That §24-6-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

**§24-6-6b. Wireless enhanced 911 fee.**

1 (a) Beginning on the first day of January, one thousand nine  
2 hundred ninety-eight, all CMRS providers, as defined in section  
3 two of this article, shall, on a monthly basis, collect from each  
4 of their in-state two-way service subscribers a wireless en-  
5 hanced 911 fee. No later than the first day of August, one  
6 thousand nine hundred ninety-eight, the Public Service Com-  
7 mission, shall, after the receipt of comments and the consider-  
8 ation of evidence presented at a hearing, issue an order which  
9 directs the CMRS providers regarding all relevant details of  
10 wireless enhanced 911 fee collection, including the determina-  
11 tion of who is considered an in-state two-way service subscriber  
12 and which shall specify how the CMRS providers shall deal  
13 with fee collection shortfalls caused by uncollectible accounts.  
14 The Public Service Commission shall solicit the views of the  
15 wireless telecommunications utilities prior to issuing the order.

16 (b) The wireless enhanced 911 fee is three dollars per  
17 month for each valid retail commercial mobile radio service  
18 subscription, as that term is defined by the Public Service  
19 Commission in its order issued under subsection (a) of this  
20 section: *Provided*, That beginning on the first day of July, two  
21 thousand five, the wireless enhanced 911 fee shall include ten  
22 cents to be distributed to the West Virginia State Police to be  
23 used for equipment upgrades for improving and integrating  
24 their communication efforts with those of the enhanced 911  
25 systems: *Provided, however*, That for the fiscal year beginning  
26 on the first day of July, two thousand five, and for every fiscal  
27 year thereafter, one million dollars of the wireless enhanced 911  
28 fee shall be distributed by the Public Service Commission to  
29 subsidize the construction of towers. The monies shall be

30 deposited in a fund administered by the West Virginia Public  
31 Service Commission, entitled "Enhanced 911 wireless Tower  
32 Access Assistance Fund", and shall be expended in accordance  
33 with an enhanced 911 wireless tower access matching grant  
34 order adopted by the Public Service Commission. The Commis-  
35 sion order shall contain terms and conditions designed to  
36 provide financial assistance loans or grants to state agencies,  
37 political subdivisions of the state and wireless telephone  
38 carriers for the acquisition, equipping and construction of new  
39 wireless towers, which would provide enhanced 911 service  
40 coverage, and which would not be available otherwise due to  
41 marginal financial viability of the applicable tower coverage  
42 area: *Provided further*, That the grants shall be allocated among  
43 potential sites based on application from county commissions  
44 demonstrating the need for enhanced 911 wireless coverage in  
45 specific areas of this state. Any tower constructed with assis-  
46 tance from the fund created by this subdivision shall be  
47 available for use by emergency services, fire departments and  
48 law enforcement agencies communication equipment, so long  
49 as that use does not interfere with the carrier's wireless signal:  
50 *And provided further*, That the Public Service Commission  
51 shall promulgate rules in accordance with article three, chapter  
52 twenty-nine-a of this code to effectuate the provisions of this  
53 subsection. The Public Service Commission is specifically  
54 authorized to promulgate emergency rules.

55 (c) Beginning in the year one thousand nine hundred  
56 ninety-seven, and every two years thereafter, the Public Service  
57 Commission shall conduct an audit of the wireless enhanced  
58 911 fee and shall recalculate the fee so that it is the weighted  
59 average rounded to the nearest penny, as of the first day of  
60 March of the respecification year, of all of the enhanced 911  
61 fees imposed by the counties which have adopted an enhanced  
62 911 ordinance: *Provided*, That the wireless enhanced 911 fee  
63 may never be increased by more than twenty-five percent of its  
64 value at the beginning of the respecification year: *Provided*,

65 *however*, That the fee may never be less than the amount set in  
66 subsection (b) of this section: *Provided further*, That beginning  
67 on the first day of July, two thousand five, the wireless en-  
68 hanced 911 fee shall include ten cents to be distributed to the  
69 West Virginia State Police to be used for equipment upgrades  
70 for improving and integrating their communication efforts with  
71 those of the enhanced 911 systems: *And provided further*, That  
72 beginning on the first day of July, two thousand five, one  
73 million dollars of the wireless enhanced 911 fee shall be  
74 distributed by the Public Service Commission to subsidize the  
75 construction of wireless towers as specified in subsection (b) of  
76 this section.

77 (d) The CMRS providers shall, after retaining a three  
78 percent billing fee, send the wireless enhanced 911 fee moneys  
79 collected, on a monthly basis, to the Public Service Commis-  
80 sion. The Public Service Commission shall, on a quarterly and  
81 approximately evenly staggered basis, disburse the fee revenue  
82 in the following manner:

83 (1) Each county that does not have a 911 ordinance in effect  
84 as of the original effective date of this section in the year one  
85 thousand nine hundred ninety-seven or has enacted a 911  
86 ordinance within the five years prior to the original effective  
87 date of this section in the year one thousand nine hundred  
88 ninety-seven, shall receive eight and one half tenths of one  
89 percent of the fee revenues received by the Public Service  
90 Commission: *Provided*, That after the effective date of this  
91 section, in the year two thousand five, when two or more  
92 counties consolidate into one county to provide government  
93 services, the consolidated county shall receive one percent of  
94 the fee revenues received by the Public Service Commission for  
95 itself and for each county merged into the consolidated county.  
96 Each county shall receive eight and one half tenths of one  
97 percent of the remainder of the fee revenues received by the  
98 Public Service Commission: *Provided, however*, That after the

99 effective date of this section, in the year two thousand five,  
100 when two or more counties consolidate into one county to  
101 provide government services, the consolidated county shall  
102 receive one percent of the fee revenues received by the Public  
103 Service Commission for itself and for each county merged into  
104 the consolidated county. Then, from any moneys remaining,  
105 each county shall receive a pro rata portion of that remainder  
106 based on that county's population as determined in the most  
107 recent decennial census as a percentage of the state total  
108 population. The Public Service Commission shall recalculate  
109 the county disbursement percentages on a yearly basis, with the  
110 changes effective on the first day of July, and using data as of  
111 the preceding first day of March. The public utilities which  
112 normally provide local exchange telecommunications service  
113 by means of lines, wires, cables, optical fibers or by other  
114 means extended to subscriber premises shall supply the data to  
115 the Public Service Commission on a county specific basis no  
116 later than the first day of June of each year;

117 (2) Counties which have an enhanced 911 ordinance in  
118 effect shall receive their share of the wireless enhanced 911 fee  
119 revenue for use in the same manner as the enhanced 911 fee  
120 revenues received by those counties pursuant to their enhanced  
121 911 ordinances;

122 (3) The Public Service Commission shall deposit the  
123 wireless enhanced 911 fee revenue for each county which does  
124 not have an enhanced 911 ordinance in effect into an escrow  
125 account which it has established for that county. Any county  
126 with an escrow account may, immediately upon adopting an  
127 enhanced 911 ordinance, receive the moneys which have  
128 accumulated in the escrow account for use as specified in  
129 subdivision (2), subsection (d) of this section: *Provided*, That  
130 a county that adopts a 911 ordinance after the original effective  
131 date of this section in the year one thousand nine hundred  
132 ninety-seven or has adopted a 911 ordinance within five years

133 of the original effective date of this section in the year one  
134 thousand nine hundred ninety-seven, shall continue to receive  
135 one percent of the total 911 fee revenue for a period of five  
136 years following the adoption of the ordinance. Thereafter, each  
137 county shall receive that county's eight and one half tenths of  
138 one percent of the remaining fee revenue, plus that county's  
139 additional pro rata portion of the fee revenues then remaining,  
140 based on that county's population as determined in the most  
141 recent decennial census as a percentage of the state total  
142 population: *Provided, however,* That every five years from the  
143 year one thousand nine hundred ninety-seven, all fee revenue  
144 residing in escrow accounts shall be disbursed on the pro rata  
145 basis specified in subdivision (1), subsection (d) of this section,  
146 except that data for counties without enhanced 911 ordinances  
147 in effect shall be omitted from the calculation and all escrow  
148 accounts shall begin again with a zero balance.

149 (e) CMRS providers have the same rights and responsibili-  
150 ties as other telephone service suppliers in dealing with the  
151 failure by a subscriber of a CMRS provider to timely pay the  
152 wireless enhanced 911 fee.

153 (f) Notwithstanding the provisions of section one-a of this  
154 article, for the purposes of this section, the term "county" means  
155 one of the counties provided in section one, article one, chapter  
156 one of this code.

157 (g) From any funds distributed to a county pursuant to this  
158 section, a total of three percent shall be set aside in a special  
159 fund to be used exclusively for the purchase of equipment that  
160 will provide information regarding the x and y coordinates of  
161 persons who call an emergency telephone system through a  
162 commercial mobile radio service: *Provided,* That upon purchase  
163 of the necessary equipment, the special fund shall be dissolved  
164 and any surplus shall be used for general operation of the  
165 emergency telephone system as may otherwise be provided by  
166 law.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Shirley White*

Chairman Senate Committee

*H. Robert Bruce*

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Harold E. Blund*

Clerk of the Senate

*Bruce R. Boy*

Clerk of the House of Delegates

*Carl Roy Tomblin*

President of the Senate

*Robert S. [unclear]*

Speaker of the House of Delegates

The within is approved this the 4th  
day of May, 2005.

*[Signature]*

Governor



PRESENTED TO THE  
GOVERNOR

APR 26 2005

Time 4:35 