



## Ohio Revised Code

### Section 128.46 Wireless 9-1-1 charges remitted to coordinator; filing returns; subscriber liability; audit; collection.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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#### (A) Prior to January 1, 2014:

(1) A wireless service provider or reseller, not later than the last day of each month, shall remit the full amount of all wireless 9-1-1 charges it collected under division (A) of section 128.42 of the Revised Code for the second preceding calendar month to the administrator, with the exception of charges equivalent to the amount authorized as a billing and collection fee under division (A)(2) of this section. In doing so, the provider or reseller may remit the requisite amount in any reasonable manner consistent with its existing operating or technological capabilities, such as by customer address, location associated with the wireless telephone number, or another allocation method based on comparable, relevant data. If the wireless service provider or reseller receives a partial payment for a bill from a wireless service subscriber, the wireless service provider or reseller shall apply the payment first against the amount the subscriber owes the wireless service provider or reseller and shall remit to the administrator such lesser amount, if any, as results from that invoice.

(2) A wireless service provider or reseller may retain as a billing and collection fee two per cent of the total wireless 9-1-1 charges it collects in a month and shall account to the administrator for the amount retained.

(3) The administrator shall return to, or credit against the next month's remittance of, a wireless service provider or reseller the amount of any remittances the administrator determines were erroneously submitted by the provider or reseller.

#### (B) Beginning January 1, 2014:

(1) Each seller of a prepaid wireless calling service, wireless service provider, and reseller shall, on or before the twenty-third day of each month, except as provided in divisions (B)(2) and (3) of this



section, do both of the following:

(a) Make and file a return for the preceding month, in the form prescribed by the tax commissioner, showing the amount of the wireless 9-1-1 charges due under section 128.42 of the Revised Code for that month;

(b) Remit the full amount due, as shown on the return, with the exception of charges equivalent to the amount authorized as a collection fee under division (B)(4) of this section.

(2) The commissioner may grant one or more thirty-day extensions for making and filing returns and remitting amounts due.

(3) If a seller is required to collect prepaid wireless 9-1-1 charges in amounts that do not merit monthly returns, the commissioner may authorize the seller to make and file returns less frequently. The commissioner shall ascertain whether this authorization is warranted upon the basis of administrative costs to the state.

(4) A wireless service provider, reseller, and seller may each retain as a collection fee three per cent of the total wireless 9-1-1 charges required to be collected under section 128.42 of the Revised Code, and shall account to the tax commissioner for the amount retained.

(5) The return required under division (B)(1)(a) of this section shall be filed electronically using the Ohio business gateway, as defined in section 718.051 of the Revised Code, the Ohio telefile system, or any other electronic means prescribed by the tax commissioner. Remittance of the amount due shall be made electronically in a manner approved by the commissioner. A wireless service provider, reseller, or seller may apply to the commissioner on a form prescribed by the commissioner to be excused from either electronic requirement of this division. For good cause shown, the commissioner may excuse the provider, reseller, or seller from either or both of the requirements and may permit the provider, reseller, or seller to file returns or make remittances by nonelectronic means.

(C)(1) Prior to January 1, 2014, each subscriber on which a wireless 9-1-1 charge is imposed under division (A) of section 128.42 of the Revised Code is liable to the state for the amount of the



charge. If a wireless service provider or reseller fails to collect the charge under that division from a subscriber of prepaid wireless service, or fails to bill any other subscriber for the charge, the wireless service provider or reseller is liable to the state for the amount not collected or billed. If a wireless service provider or reseller collects charges under that division and fails to remit the money to the administrator, the wireless service provider or reseller is liable to the state for any amount collected and not remitted.

(2) Beginning January 1, 2014:

(a) Each subscriber or consumer on which a wireless 9-1-1 charge is imposed under section 128.42 of the Revised Code is liable to the state for the amount of the charge. If a wireless service provider or reseller fails to bill or collect the charge, or if a seller fails to collect the charge, the provider, reseller, or seller is liable to the state for the amount not billed or collected. If a provider, reseller, or seller fails to remit money to the tax commissioner as required under this section, the provider, reseller, or seller is liable to the state for the amount not remitted, regardless of whether the amount was collected.

(b) No provider of a prepaid wireless calling service shall be liable to the state for any wireless 9-1-1 charge imposed under division (B)(1) of section 128.42 of the Revised Code that was not collected or remitted.

(D) Prior to January 1, 2014:

(1) If the steering committee has reason to believe that a wireless service provider or reseller has failed to bill, collect, or remit the wireless 9-1-1 charge as required by divisions (A)(1) and (C)(1) of this section or has retained more than the amount authorized under division (A)(2) of this section, and after written notice to the provider or reseller, the steering committee may audit the provider or reseller for the sole purpose of making such a determination. The audit may include, but is not limited to, a sample of the provider's or reseller's billings, collections, remittances, or retentions for a representative period, and the steering committee shall make a good faith effort to reach agreement with the provider or reseller in selecting that sample.

(2) Upon written notice to the wireless service provider or reseller, the steering committee, by



order after completion of the audit, may make an assessment against the provider or reseller if, pursuant to the audit, the steering committee determines that the provider or reseller has failed to bill, collect, or remit the wireless 9-1-1 charge as required by divisions (A)(1) and (C)(1) of this section or has retained more than the amount authorized under division (A)(2) of this section. The assessment shall be in the amount of any remittance that was due and unpaid on the date notice of the audit was sent by the steering committee to the provider or reseller or, as applicable, in the amount of the excess amount under division (A)(2) of this section retained by the provider or reseller as of that date.

(3) The portion of any assessment not paid within sixty days after the date of service by the steering committee of the assessment notice under division (D)(2) of this section shall bear interest from that date until paid at the rate per annum prescribed by section 5703.47 of the Revised Code. That interest may be collected by making an assessment under division (D)(2) of this section. An assessment under this division and any interest due shall be remitted in the same manner as the wireless 9-1-1 charge imposed under division (A) of section 128.42 of the Revised Code.

(4) Unless the provider, reseller, or seller assessed files with the steering committee within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the administrator. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the administrator or the steering committee prior to the date shown on the final determination.

(5) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas in the county in which the place of business of the assessed party is located. If the party assessed maintains no place of business in this state, the certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas of Franklin county. Immediately upon the filing, the clerk shall enter a judgment for the state against the assessed party in the amount shown on the final assessment. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for wireless 9-1-1 charges" and shall have the same effect as other judgments. The judgment shall be executed upon the request of the steering



committee.

(6) An assessment under this division does not discharge a subscriber's liability to reimburse the provider or reseller for the wireless 9-1-1 charge imposed under division (A) of section 128.42 of the Revised Code. If, after the date of service of the audit notice under division (D)(1) of this section, a subscriber pays a wireless 9-1-1 charge for the period covered by the assessment, the payment shall be credited against the assessment.

(7) All money collected by the administrator under division (D) of this section shall be paid to the treasurer of state, for deposit to the credit of the wireless 9-1-1 government assistance fund.

(E) Beginning January 1, 2014:

(1) If the tax commissioner has reason to believe that a wireless service provider, reseller, or seller has failed to bill, collect, or remit the wireless 9-1-1 charge as required by this section and section 128.42 of the Revised Code or has retained more than the amount authorized under division (B)(4) of this section, and after written notice to the provider, reseller, or seller, the tax commissioner may audit the provider, reseller, or seller for the sole purpose of making such a determination. The audit may include, but is not limited to, a sample of the provider's, reseller's, or seller's billings, collections, remittances, or retentions for a representative period, and the tax commissioner shall make a good faith effort to reach agreement with the provider, reseller, or seller in selecting that sample.

(2) Upon written notice to the wireless service provider, reseller, or seller, the tax commissioner, after completion of the audit, may make an assessment against the provider, reseller, or seller if, pursuant to the audit, the tax commissioner determines that the provider, reseller, or seller has failed to bill, collect, or remit the wireless 9-1-1 charge as required by this section and section 128.42 of the Revised Code or has retained more than the amount authorized under division (B)(4) of this section. The assessment shall be in the amount of any remittance that was due and unpaid on the date notice of the audit was sent by the tax commissioner to the provider, reseller, or seller or, as applicable, in the amount of the excess amount under division (B)(4) of this section retained by the provider, reseller, or seller as of that date.



(3) The portion of any assessment consisting of wireless 9-1-1 charges due and not paid within sixty days after the date that the assessment was made under division (E)(2) of this section shall bear interest from that date until paid at the rate per annum prescribed by section 5703.47 of the Revised Code. That interest may be collected by making an assessment under division (E)(2) of this section.

(4) Unless the provider, reseller, or seller assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment shall become final and the amount of the assessment shall be due and payable from the party assessed to the treasurer of state, for deposit to the next generation 9-1-1 fund, which is created under section 128.54 of the Revised Code. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(5) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas in the county in which the business of the assessed party is conducted. If the party assessed maintains no place of business in this state, the certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas of Franklin county. Immediately upon the filing, the clerk shall enter a judgment for the state against the assessed party in the amount shown on the final assessment. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for wireless 9-1-1 charges" and shall have the same effect as other judgments. The judgment shall be executed upon the request of the tax commissioner.

(6) If the commissioner determines that the commissioner erroneously has refunded a wireless 9-1-1 charge to any person, the commissioner may make an assessment against that person for recovery of the erroneously refunded charge.

(7) An assessment under division (E) of this section does not discharge a subscriber's or consumer's liability to reimburse the provider, reseller, or seller for a wireless 9-1-1 charge. If, after the date of service of the audit notice under division (E)(1) of this section, a subscriber or consumer pays a wireless 9-1-1 charge for the period covered by the assessment, the payment shall be credited



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against the assessment.