

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 278

**Representative Hillyer
Cosponsor: Representative Seitz**



A BILL

To amend sections 128.46, 4501.29, and 4501.30 and 1
to enact sections 128.541, 128.543, 128.545, 2
128.547, 4501.304, and 4503.305 of the Revised 3
Code to make changes to laws governing the 4
multi-agency radio communications system 5
(MARCS). 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 128.46, 4501.29, and 4501.30 be 7
amended and sections 128.541, 128.543, 128.545, 128.547, 8
4501.304, and 4503.305 of the Revised Code be enacted to read as 9
follows: 10

Sec. 128.46. (A) Prior to January 1, 2014: 11

(1) A wireless service provider or reseller, not later 12
than the last day of each month, shall remit the full amount of 13
all wireless 9-1-1 charges it collected under division (A) of 14
section 128.42 of the Revised Code for the second preceding 15
calendar month to the administrator, with the exception of 16
charges equivalent to the amount authorized as a billing and 17
collection fee under division (A) (2) of this section. In doing 18

so, the provider or reseller may remit the requisite amount in 19
any reasonable manner consistent with its existing operating or 20
technological capabilities, such as by customer address, 21
location associated with the wireless telephone number, or 22
another allocation method based on comparable, relevant data. If 23
the wireless service provider or reseller receives a partial 24
payment for a bill from a wireless service subscriber, the 25
wireless service provider or reseller shall apply the payment 26
first against the amount the subscriber owes the wireless 27
service provider or reseller and shall remit to the 28
administrator such lesser amount, if any, as results from that 29
invoice. 30

(2) A wireless service provider or reseller may retain as 31
a billing and collection fee two per cent of the total wireless 32
9-1-1 charges it collects in a month and shall account to the 33
administrator for the amount retained. 34

(3) The administrator shall return to, or credit against 35
the next month's remittance of, a wireless service provider or 36
reseller the amount of any remittances the administrator 37
determines were erroneously submitted by the provider or 38
reseller. 39

(B) Beginning January 1, 2014: 40

(1) Each seller of a prepaid wireless calling service, 41
wireless service provider, and reseller shall, on or before the 42
twenty-third day of each month, except as provided in divisions 43
(B) (2) and (3) of this section, do both of the following: 44

(a) Make and file a return for the preceding month, in the 45
form prescribed by the tax commissioner, showing the amount of 46
the wireless 9-1-1 charges due under section 128.42 of the 47

Revised Code and the wireless emergency radio technology charges 48
due under sections 128.541 and 128.543 of the Revised Code for 49
that month; 50

(b) Remit the full amount due, as shown on the return, 51
with the exception of charges equivalent to the amount 52
authorized as a collection fee under division (B) (4) of this 53
section. 54

(2) The commissioner may grant one or more thirty-day 55
extensions for making and filing returns and remitting amounts 56
due. 57

(3) If a seller is required to collect prepaid wireless 9- 58
1-1 charges and wireless emergency radio technology retail 59
charges under section 128.543 of the Revised Code in amounts 60
that do not merit monthly returns, the commissioner may 61
authorize the seller to make and file returns less frequently. 62
The commissioner shall ascertain whether this authorization is 63
warranted upon the basis of administrative costs to the state. 64

(4) A wireless service provider, reseller, and seller may 65
each retain as a collection fee three per cent of the total 66
wireless 9-1-1 charges and wireless emergency radio technology 67
charges required to be collected under ~~section~~ sections 128.42, 68
128.541, and 128.543 of the Revised Code, and shall account to 69
the tax commissioner for the amount retained. 70

(5) The return required under division (B) (1) (a) of this 71
section shall be filed electronically using the Ohio business 72
gateway, as defined in section 718.01 of the Revised Code, the 73
Ohio telefile system, or any other electronic means prescribed 74
by the tax commissioner. Remittance of the amount due shall be 75
made electronically in a manner approved by the commissioner. A 76

wireless service provider, reseller, or seller may apply to the 77
commissioner on a form prescribed by the commissioner to be 78
excused from either electronic requirement of this division. For 79
good cause shown, the commissioner may excuse the provider, 80
reseller, or seller from either or both of the requirements and 81
may permit the provider, reseller, or seller to file returns or 82
make remittances by nonelectronic means. 83

(C) (1) Prior to January 1, 2014, each subscriber on which 84
a wireless 9-1-1 charge is imposed under division (A) of section 85
128.42 of the Revised Code is liable to the state for the amount 86
of the charge. If a wireless service provider or reseller fails 87
to collect the charge under that division from a subscriber of 88
prepaid wireless service, or fails to bill any other subscriber 89
for the charge, the wireless service provider or reseller is 90
liable to the state for the amount not collected or billed. If a 91
wireless service provider or reseller collects charges under 92
that division and fails to remit the money to the administrator, 93
the wireless service provider or reseller is liable to the state 94
for any amount collected and not remitted. 95

(2) Beginning January 1, 2014: 96

(a) Each subscriber or consumer on which a wireless 9-1-1 97
charge is imposed under section 128.42 of the Revised Code and a 98
wireless emergency radio technology charge is imposed under 99
section 128.541 or 128.543 of the Revised Code is liable to the 100
state for the amount of the ~~charge~~charges. If a wireless service 101
provider or reseller fails to bill or collect the ~~charge~~charges, 102
or if a seller fails to collect the ~~charge~~charges, the provider, 103
reseller, or seller is liable to the state for the amount not 104
billed or collected. If a provider, reseller, or seller fails to 105
remit money to the tax commissioner as required under this 106

section, the provider, reseller, or seller is liable to the 107
state for the amount not remitted, regardless of whether the 108
amount was collected. 109

(b) No provider of a prepaid wireless calling service 110
shall be liable to the state for any wireless 9-1-1 charge 111
imposed under division (B) (1) of section 128.42 of the Revised 112
Code or wireless emergency radio technology retail charge 113
imposed under section 128.543 of the Revised Code that was not 114
collected or remitted. 115

(D) Prior to January 1, 2014: 116

(1) If the steering committee has reason to believe that a 117
wireless service provider or reseller has failed to bill, 118
collect, or remit the wireless 9-1-1 charge as required by 119
divisions (A) (1) and (C) (1) of this section or has retained more 120
than the amount authorized under division (A) (2) of this 121
section, and after written notice to the provider or reseller, 122
the steering committee may audit the provider or reseller for 123
the sole purpose of making such a determination. The audit may 124
include, but is not limited to, a sample of the provider's or 125
reseller's billings, collections, remittances, or retentions for 126
a representative period, and the steering committee shall make a 127
good faith effort to reach agreement with the provider or 128
reseller in selecting that sample. 129

(2) Upon written notice to the wireless service provider 130
or reseller, the steering committee, by order after completion 131
of the audit, may make an assessment against the provider or 132
reseller if, pursuant to the audit, the steering committee 133
determines that the provider or reseller has failed to bill, 134
collect, or remit the wireless 9-1-1 charge as required by 135
divisions (A) (1) and (C) (1) of this section or has retained more 136

than the amount authorized under division (A) (2) of this 137
section. The assessment shall be in the amount of any remittance 138
that was due and unpaid on the date notice of the audit was sent 139
by the steering committee to the provider or reseller or, as 140
applicable, in the amount of the excess amount under division 141
(A) (2) of this section retained by the provider or reseller as 142
of that date. 143

(3) The portion of any assessment not paid within sixty 144
days after the date of service by the steering committee of the 145
assessment notice under division (D) (2) of this section shall 146
bear interest from that date until paid at the rate per annum 147
prescribed by section 5703.47 of the Revised Code. That interest 148
may be collected by making an assessment under division (D) (2) 149
of this section. An assessment under this division and any 150
interest due shall be remitted in the same manner as the 151
wireless 9-1-1 charge imposed under division (A) of section 152
128.42 of the Revised Code. 153

(4) Unless the provider, reseller, or seller assessed 154
files with the steering committee within sixty days after 155
service of the notice of assessment, either personally or by 156
certified mail, a written petition for reassessment, signed by 157
the party assessed or that party's authorized agent having 158
knowledge of the facts, the assessment shall become final and 159
the amount of the assessment shall be due and payable from the 160
party assessed to the administrator. The petition shall indicate 161
the objections of the party assessed, but additional objections 162
may be raised in writing if received by the administrator or the 163
steering committee prior to the date shown on the final 164
determination. 165

(5) After an assessment becomes final, if any portion of 166

the assessment remains unpaid, including accrued interest, a 167
certified copy of the final assessment may be filed in the 168
office of the clerk of the court of common pleas in the county 169
in which the place of business of the assessed party is located. 170
If the party assessed maintains no place of business in this 171
state, the certified copy of the final assessment may be filed 172
in the office of the clerk of the court of common pleas of 173
Franklin county. Immediately upon the filing, the clerk shall 174
enter a judgment for the state against the assessed party in the 175
amount shown on the final assessment. The judgment may be filed 176
by the clerk in a loose-leaf book entitled "special judgments 177
for wireless 9-1-1 charges" and shall have the same effect as 178
other judgments. The judgment shall be executed upon the request 179
of the steering committee. 180

(6) An assessment under this division does not discharge a 181
subscriber's liability to reimburse the provider or reseller for 182
the wireless 9-1-1 charge imposed under division (A) of section 183
128.42 of the Revised Code. If, after the date of service of the 184
audit notice under division (D)(1) of this section, a subscriber 185
pays a wireless 9-1-1 charge for the period covered by the 186
assessment, the payment shall be credited against the 187
assessment. 188

(7) All money collected by the administrator under 189
division (D) of this section shall be paid to the treasurer of 190
state, for deposit to the credit of the wireless 9-1-1 191
government assistance fund. 192

(E) Beginning January 1, 2014: 193

(1) If the tax commissioner has reason to believe that a 194
wireless service provider, reseller, or seller has failed to 195
bill, collect, or remit the wireless 9-1-1 charge as required by 196

this section and section 128.42 of the Revised Code or a 197
wireless emergency radio technology charge under section 128.541 198
or 128.543 of the Revised Code or has retained more than the 199
amount authorized under division (B) (4) of this section, and 200
after written notice to the provider, reseller, or seller, the 201
tax commissioner may audit the provider, reseller, or seller for 202
the sole purpose of making such a determination. The audit may 203
include, but is not limited to, a sample of the provider's, 204
reseller's, or seller's billings, collections, remittances, or 205
retentions for a representative period, and the tax commissioner 206
shall make a good faith effort to reach agreement with the 207
provider, reseller, or seller in selecting that sample. 208

(2) Upon written notice to the wireless service provider, 209
reseller, or seller, the tax commissioner, after completion of 210
the audit, may make an assessment against the provider, 211
reseller, or seller if, pursuant to the audit, the tax 212
commissioner determines that the provider, reseller, or seller 213
has failed to bill, collect, or remit the wireless 9-1-1 charge 214
or wireless emergency radio technology charge as required by 215
this section and ~~section~~ sections 128.42 and 128.541 or 128.543 216
of the Revised Code or has retained more than the amount 217
authorized under division (B) (4) of this section. The assessment 218
shall be in the amount of any remittance that was due and unpaid 219
on the date notice of the audit was sent by the tax commissioner 220
to the provider, reseller, or seller or, as applicable, in the 221
amount of the excess amount under division (B) (4) of this 222
section retained by the provider, reseller, or seller as of that 223
date. 224

(3) The portion of any assessment consisting of wireless 225
9-1-1 charges or wireless emergency radio technology charges due 226
and not paid within sixty days after the date that the 227

assessment was made under division (E) (2) of this section shall 228
bear interest from that date until paid at the rate per annum 229
prescribed by section 5703.47 of the Revised Code. That interest 230
may be collected by making an assessment under division (E) (2) 231
of this section. 232

(4) Unless the provider, reseller, or seller assessed 233
files with the tax commissioner within sixty days after service 234
of the notice of assessment, either personally or by certified 235
mail, a written petition for reassessment, signed by the party 236
assessed or that party's authorized agent having knowledge of 237
the facts, the assessment shall become final and the amount of 238
the assessment shall be due and payable from the party assessed 239
to the treasurer of state, for deposit to the next generation 9- 240
1-1 fund, which is created under section 128.54 of the Revised 241
Code. The petition shall indicate the objections of the party 242
assessed, but additional objections may be raised in writing if 243
received by the commissioner prior to the date shown on the 244
final determination. If the petition has been properly filed, 245
the commissioner shall proceed under section 5703.60 of the 246
Revised Code. 247

(5) After an assessment becomes final, if any portion of 248
the assessment remains unpaid, including accrued interest, a 249
certified copy of the final assessment may be filed in the 250
office of the clerk of the court of common pleas in the county 251
in which the business of the assessed party is conducted. If the 252
party assessed maintains no place of business in this state, the 253
certified copy of the final assessment may be filed in the 254
office of the clerk of the court of common pleas of Franklin 255
county. Immediately upon the filing, the clerk shall enter a 256
judgment for the state against the assessed party in the amount 257
shown on the final assessment. The judgment may be filed by the 258

clerk in a loose-leaf book entitled "special judgments for 259
wireless 9-1-1 and wireless emergency radio technology charges" 260
and shall have the same effect as other judgments. The judgment 261
shall be executed upon the request of the tax commissioner. 262

(6) If the commissioner determines that the commissioner 263
erroneously has refunded a wireless 9-1-1 charge or wireless 264
emergency radio technology charge to any person, the 265
commissioner may make an assessment against that person for 266
recovery of the erroneously refunded charge. 267

(7) An assessment under division (E) of this section does 268
not discharge a subscriber's or consumer's liability to 269
reimburse the provider, reseller, or seller for a wireless 9-1-1 270
charge or wireless emergency radio technology charge. If, after 271
the date of service of the audit notice under division (E) (1) of 272
this section, a subscriber or consumer pays a wireless 9-1-1 273
charge or wireless emergency radio technology charge for the 274
period covered by the assessment, the payment shall be credited 275
against the assessment. 276

Sec. 128.541. There is hereby imposed a wireless emergency 277
radio technology subscriber charge of fifteen cents per month on 278
each wireless telephone number of a wireless subscriber who has 279
a billing address in this state. Each wireless service provider 280
and each reseller shall collect the wireless emergency radio 281
technology subscriber charge as a specific line item on each 282
subscriber's monthly bill. The line item shall be expressly 283
designated "State/Local Wireless Emergency Radio Technology 284
Costs (\$0.15/billed number)." 285

Sec. 128.543. (A) There is hereby imposed, on each retail 286
sale of a prepaid wireless calling service occurring in this 287
state, a wireless emergency radio technology retail charge of 288

fifteen cents. 289

(B) A retail sale occurs in this state if it is effected 290
by the consumer appearing in person at a seller's business 291
location in this state, or if the sale is sourced to this state 292
under division (E) (3) of section 5739.034 of the Revised Code, 293
except that under that division, in lieu of sourcing a sale 294
under division (C) (5) of section 5739.033 of the Revised Code, 295
the seller, rather than the service provider, may elect to 296
source the sale to the location associated with the mobile 297
telephone number. 298

(C) (1) Except as provided in division (D) (3) of this 299
section, the seller of the prepaid wireless calling service 300
shall collect the charge from the consumer at the time of each 301
retail sale and disclose the amount of the charge to the 302
consumer at the time of the sale by itemizing the charge on the 303
receipt, invoice, or similar form of written documentation 304
provided to the consumer. 305

(2) The seller shall comply with the reporting and 306
remittance requirements under section 128.46 of the Revised 307
Code. 308

(D) When a prepaid wireless calling service is sold with 309
one or more other products or services for a single, nonitemized 310
price, the wireless emergency radio technology retail charge 311
imposed under division (A) of this section applies to the entire 312
nonitemized price, except as provided in divisions (D) (1) to (3) 313
of this section. 314

(1) If the amount of the prepaid wireless calling service 315
is disclosed to the consumer as a dollar amount, the seller may 316
elect to apply the charge only to that dollar amount. 317

(2) If the seller can identify the portion of the 318
nonitemized price that is attributable to the prepaid wireless 319
calling service, by reasonable and verifiable standards from the 320
seller's books and records that are kept in the regular course 321
of business for other purposes, including nontax purposes, the 322
seller may elect to apply the charge only to that portion. 323

(3) If a minimal amount of a prepaid wireless calling 324
service is sold with a prepaid wireless calling device for the 325
single, nonitemized price, the seller may elect not to collect 326
the charge. As used in this division, "minimal" means either ten 327
minutes or less or five dollars or less. 328

Sec. 128.545. The wireless emergency radio technology 329
charges imposed under sections 128.541 and 128.543 of the 330
Revised Code are exempt from state or local taxation. 331

Sec. 128.547. (A) The wireless emergency radio technology 332
subscriber charge imposed under section 128.541 of the Revised 333
Code and remitted under section 128.46 of the Revised Code shall 334
be paid to the treasurer of state for deposit as follows: 335

(1) Ten cents shall be deposited to the MARCS 336
administration fund created in section 4501.29 of the Revised 337
Code. 338

(2) Five cents shall be deposited into the wireless 9-1-1 339
government assistance fund as created under section 128.54 of 340
the Revised Code. 341

(B) The wireless emergency radio technology retail charge 342
imposed under section 128.543 of the Revised Code and remitted 343
under section 128.46 of the Revised Code shall be paid to the 344
treasurer of state for deposit as follows: 345

(1) Ten cents shall be deposited to the MARCS 346

administration fund created in section 4501.29 of the Revised 347
Code. 348

(2) Five cents shall be deposited into the wireless 9-1-1 349
government assistance fund as created under section 128.54 of 350
the Revised Code. 351

Sec. 4501.29. (A) The department of administrative 352
services shall collect user fees from participants in the multi- 353
agency radio communications system (MARCS). The director of 354
administrative services, with the advice of the MARCS steering 355
committee and the consent of the director of budget and 356
management, shall determine the amount of the user fees and the 357
manner by which the fees shall be collected. ~~All~~ 358

(B) In addition to the wireless emergency radio technology 359
charges imposed under sections 128.541 and 128.543 of the 360
Revised Code and deposited pursuant to section 128.547 of the 361
Revised Code, all moneys from user fees under division (A) of 362
this section shall be deposited in the MARCS administration 363
fund, which is hereby created in the state treasury. The 364
director shall use the funds for the operations and 365
infrastructure maintenance of MARCS and other advanced public 366
safety communication technology, including services and 367
equipment related to the use of the nationwide public safety 368
broadband network, as described in 47 U.S.C. 1422. All 369
investment earnings on moneys in the fund shall be credited to 370
the fund. 371

Sec. 4501.30. As used in sections 4501.30 to ~~4501.303~~ 372
4501.305 of the Revised Code: 373

(A) "Emergency medical services organization" has the same 374
meaning as in section 4765.01 of the Revised Code. 375

<u>(B) "Fire department" has the same meaning as in section</u>	376
<u>3750.01 of the Revised Code.</u>	377
<u>(C) "Law enforcement agency" has the same meaning as in</u>	378
<u>section 109.573 of the Revised Code.</u>	379
<u>(D) "MARCS" means the multi-agency radio communications</u>	380
<u>system.</u>	381
<u>(E) "P25 standards" means standards for digital radio</u>	382
<u>communications for use by federal, state, provincial, and local</u>	383
<u>public safety agencies in North America to enable communications</u>	384
<u>with other agencies and mutual aid response teams in</u>	385
<u>emergencies. "P25 standards" are the standards produced through</u>	386
<u>the joint efforts of the association of public-safety</u>	387
<u>communications officials, the national association of state</u>	388
<u>technology directors, selected federal agencies, and the</u>	389
<u>national communications system.</u>	390
<u>(F) "P25 system" means a communications system that meets</u>	391
<u>P25 standards and fosters interoperability in mission critical</u>	392
<u>communications as certified by the MARCS steering committee.</u>	393
<u>(G) "County" means any county in the state with a</u>	394
<u>population of less than five hundred thousand as of the most</u>	395
<u>recent federal decennial census.</u>	396
<u>(H) "State agency" has the same meaning as in section 1.60</u>	397
<u>of the Revised Code.</u>	398
<u>(I) "State or local entity" means a state agency, county,</u>	399
<u>law enforcement agency, fire department, or emergency medical</u>	400
<u>services organization.</u>	401
<u>Sec. 4501.304. (A) Not later than five years after the</u>	402
<u>effective date of this section, a state or local entity shall</u>	403

use MARCS as the state or local entity's digital radio 404
communications system. 405

(B) A person operating an advanced communication 406
technology may attach equipment necessary for the technology's 407
operation to any MARCS utility tower. A state or local entity 408
shall provide any authorizations necessary for the person to 409
attach such equipment. 410

Sec. 4503.305. (A) The department of administrative 411
services shall work with state agencies to identify available 412
state resources and funding that may be used to provide 413
increased communications and broadband access throughout the 414
state. 415

(B) In identifying such resources, the department and 416
state agencies shall research methods for leveraging state 417
assets, including cell towers, utility poles, rights-of-way, 418
buildings, and real property. The department and state agencies 419
shall also research and evaluate impediments to leveraging 420
assets, including any restrictions in advertising or use of the 421
asset, constraints in renting property, and any other similar 422
impediments. 423

(C) The department or state agency may work with other 424
public or private organizations in order to identify 425
opportunities for communications and broadband expansion in the 426
state. 427

(D) The department and any other state agency shall use 428
the research conducted in accordance with division (B) of this 429
section to create a plan for each state agency to better utilize 430
state resources and work together with the department and other 431
state agencies to expand communications and broadband networks 432

throughout the state.

433

Section 2. That existing sections 128.46, 4501.29, and
4501.30 of the Revised Code are hereby repealed.

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