

AMENDED IN SENATE AUGUST 7, 2012
AMENDED IN SENATE SEPTEMBER 8, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1050

Introduced by Assembly Member Ma

February 18, 2011

An act to add Section 316 to the Public Utilities Code, and to add Part 21 (commencing with Section 42000) to Division 2 of the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Telecommunications: prepaid mobile telephony services: taxes and fees.

(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Surcharge amounts are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of

General Services for its costs in administration of the “911” emergency telephone number system.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state’s telecommunications universal service programs and authorizes the commission to impose charges for the purpose of funding those programs.

This bill would enact the Prepaid Wireless Surcharge Collection Act. The bill would establish a prepaid communications charge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid communications charge would include a state component, as defined, and if a local government has adopted utility user taxes or other specified charges that are otherwise applicable to prepaid mobile telephony services and the retail transaction occurs within that jurisdiction, a local component. The bill would state the intent of the Legislature to develop a method whereby a seller is required to collect the local component. The bill would require a seller, as defined, to collect the prepaid communications charge from a consumer and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board, *after deducting its administrative expenses*, to remit that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act to the California Technology Agency and remit the balance of the state component, ~~minus certain administrative costs incurred by the board~~, to the Public Utilities Commission. The bill would require the State Board of Equalization to remit the local component, if applicable, to the local government. The bill would require the Public Utilities Commission to annually compute the commission’s

reimbursement fee and specified telecommunications universal service program fees, to post notice of those fees on its Internet Web site, and to notify the State Board of Equalization of the amounts.

(2) *The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.*

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(2)

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 316 is added to the Public Utilities Code,
2 to read:

3 316. (a) The commission shall annually, on or before
4 December 31, compute a reimbursement fee to be collected and
5 remitted to the commission pursuant to the Prepaid Wireless
6 Surcharge Collection Act (Part 21 (commencing with Section
7 42000) of Division 2 of the Revenue and Taxation Code). On or
8 before January 15 of the following year, the commission shall post
9 notice of the fee on its Internet Web site and notify the State Board
10 of Equalization of this information.

11 (b) The commission shall annually, on or before December 31,
12 compute the telecommunications universal service fees to be
13 collected and remitted to the commission pursuant to the Prepaid
14 Wireless Surcharge Collection Act (Part 21 (commencing with
15 Section 42000) of Division 2 of the Revenue and Taxation Code).
16 On or before January 15 of the following year, the commission
17 shall post notice of the fee on its Internet Web site and notify the

1 State Board of Equalization of this information. ~~In computing the~~
 2 ~~telecommunications universal service fees, the commission shall~~
 3 ~~consider the degree to which persons who utilize prepaid mobile~~
 4 ~~telephony services benefit from the state's programs to advance~~
 5 ~~universal service and adjust those fees downward to the extent the~~
 6 ~~commission determines that persons who purchase prepaid services~~
 7 ~~derive a lower benefit from the state's universal service programs~~
 8 ~~than do subscribers of a telecommunications service plan.~~

9 ~~(e) A seller collecting prepaid communications charges pursuant~~
 10 ~~to Part 21 (commencing with Section 42000) of Division 2 of the~~
 11 ~~Revenue and Taxation Code may rely upon the accuracy of the~~
 12 ~~information posted on the commission's Internet Web site in~~
 13 ~~collecting those charges.~~

14 *(c) (1) Nothing in this section restricts the commission's*
 15 *authority to adjust reimbursement fees or universal service fees*
 16 *or requires that they only be adjusted once annually.*

17 *(2) In annually computing reimbursement fees and universal*
 18 *service fees to be collected and remitted to the commission*
 19 *pursuant to this section, the commission shall adjust the fees to*
 20 *account for any past overcollection of fees from prepaid mobile*
 21 *telephony service customers resulting from a reduction in fees*
 22 *made subsequent to December 31 of the previous year.*

23 *(3) In annually computing reimbursement fees and universal*
 24 *service fees to be collected and remitted to the commission*
 25 *pursuant to this section, the commission may adjust the fees to*
 26 *account for any past undercollection of fees from prepaid mobile*
 27 *telephony service customers resulting from an increase in fees*
 28 *made subsequent to December 31 of the previous year.*

29 *(4) If both upward and downward adjustments are made to*
 30 *reimbursement fees and universal service fees subsequent to*
 31 *December 31, the commission may adjust how collections are*
 32 *deposited into the reimbursement and universal service accounts*
 33 *so that overcollections or undercollections are minimized.*

34 *(5) It is the intent of the Legislature that reimbursement fees*
 35 *and universal service fees be applied, as much as possible, in a*
 36 *competitively neutral manner that does not favor either prepaid*
 37 *or postpaid payment for mobile telephony services, and that, over*
 38 *time, collections of state charges from prepaid and postpaid mobile*
 39 *telephony service customers balance out so that neither pay a*
 40 *disproportionate amount.*

1 SEC. 2. Part 21 (commencing with Section 42000) is added to
2 Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 21. PREPAID WIRELESS SURCHARGE COLLECTION
5 ACT

6
7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

8
9 42000. This part shall be known, and may be cited, as the
10 Prepaid Wireless Surcharge Collection Act.

11 42002. The Legislature finds and declares all of the following:

12 (a) Maintaining effective and efficient telecommunications
13 services, 911 emergency systems, telecommunications-related
14 public policy programs to promote universal service, and various
15 local programs across the state benefits all persons with access to
16 the telecommunications system.

17 (b) Under existing law, end-use communications taxes, fees,
18 and surcharges, including the Emergency Telephone Users
19 Surcharge Act (Part 20 (commencing with Section 41001)),
20 telecommunications universal service surcharges, local 911
21 emergency system surcharges, and utility user taxes are important
22 funding mechanisms to assist state and local governments with
23 the deployment of a variety of important services and programs
24 to the citizens of this state.

25 (c) Providers of end-use communications services are required
26 to collect and remit communications taxes, fees, and surcharges
27 on various types of communication service revenues, as provided
28 by existing state or local law.

29 ~~(d) Under existing law, there is a method for collecting~~
30 ~~communications taxes, fees, and surcharges from postpaid~~
31 ~~communications end-use consumers. However, there is no method~~
32 ~~for collecting communications taxes, fees, and surcharges from~~
33 ~~prepaid end-use consumers.~~

34 (e)

35 (d) Consumers purchase prepaid communications services at a
36 wide variety of retail locations and other distribution channels, as
37 well as through service providers.

38 (f)

39 (e) Prepaid communications services are an important and
40 growing segment of the communications industry. Prepaid

1 communications services are often the only means by which
2 persons with low incomes can obtain limited access to the
3 telecommunications system.

4 ~~(g)~~

5 (f) To ensure equitable contributions from end-use consumers
6 of postpaid and prepaid communications services, there should be
7 standardization with respect to the method used to collect
8 communications taxes, fees, and surcharges from end-use
9 consumers of prepaid communications services.

10 42004. For purposes of this part, the following terms have the
11 following meanings:

12 (a) “Communications charge” means any and all state and
13 locally authorized taxes, fees, and surcharges that are applicable
14 to mobile telephony services, including each of the following:

15 (1) Surcharges authorized pursuant to the Emergency Telephone
16 Users Surcharge Act (Part 20 (commencing with Section 41001))
17 that are applicable to mobile telephony services.

18 (2) Charges authorized by the Public Utilities Commission to
19 be collected from end-use customers of mobile telephony services,
20 including:

21 (A) The California High-Cost Fund-A Administrative
22 Committee Fund program surcharge (Section 275.6 of the Public
23 Utilities Code).

24 (B) The California High-Cost Fund-B Administrative Committee
25 Fund program surcharge (Section 739.3 of the Public Utilities
26 Code).

27 (C) The Deaf and Disabled Telecommunications Program
28 Administrative Committee Fund surcharge (Section 2881 of the
29 Public Utilities Code).

30 (D) The California Teleconnect Fund Administrative Committee
31 Fund program surcharge (Section 280 of the Public Utilities Code).

32 (E) The California Advanced Services Fund program surcharge
33 (Section 281 of the Public Utilities Code).

34 (F) The Moore Universal Telephone Service Act (Article 8
35 (commencing with Section 871) of Chapter 4 of Part 1 of Division
36 1 of the Public Utilities Code).

37 (G) Public Utilities Commission reimbursement fees collected
38 pursuant to Chapter 2.5 (commencing with Section 401) of Part 1
39 of Division 1 of the Public Utilities Code.

1 (3) Local 911 or access line taxes, fees, or surcharges that are
2 applicable to mobile telephony services.

3 (4) Local utility user taxes that are applicable to mobile
4 telephony services.

5 (b) “Consumer” means a person who purchases prepaid mobile
6 telephony services in a retail transaction.

7 (c) “Local component” means those items included in paragraphs
8 (3) and (4) of subdivision (a), for a retail transaction, as defined
9 in subdivision (h).

10 (d) “Mobile telephony service” and “mobile data service” have
11 the same meanings as defined in Section 224.4 of the Public
12 Utilities Code.

13 (e) “Prepaid communications charge” means a communications
14 charge that is required to be collected by a seller from a consumer
15 in the amount established pursuant to Chapter 2 (commencing with
16 Section 42010).

17 (f) “Prepaid mobile telephony services” means a purchase of
18 the right to utilize mobile telephony services, either alone or in
19 combination with mobile data services, that is paid for in advance
20 and is sold in predetermined units or dollars of which the number
21 declines with use in a known amount.

22 (g) “Provider” means a person or corporation that provides
23 prepaid mobile ~~telephone~~ *telephony* services pursuant to a license
24 issued by the Federal Communications Commission.

25 (h) “Retail transaction” means the purchase of prepaid mobile
26 telephony services, either alone or in combination with mobile
27 data services, from a seller for any purpose other than resale.

28 (i) “Seller” means a person or corporation that sells prepaid
29 mobile telephony service to a consumer.

30 (j) “State component” means those portions of the prepaid
31 communications charge that are collected and remitted for state
32 services, specifically those items included in paragraphs (1) and
33 (2) of subdivision (a).

34

35 CHAPTER 2. THE PREPAID COMMUNICATIONS CHARGE

36

37 42010. (a) There is hereby imposed upon end-use consumers
38 a prepaid communications charge that consists of the state
39 component and the local component, if applicable, to be collected

1 at the time of the retail transaction based upon a percentage of the
2 sales price of each retail transaction that occurs in this state.

3 (b) Beginning ____, the state component of the prepaid
4 communications charge shall be collected by each seller from the
5 consumer for each retail transaction that occurs in the state. The
6 board shall annually post on its Internet Web site the amount of
7 the state component, to include those amounts determined by the
8 Public Utilities Commission pursuant to Section 316 of the Public
9 Utilities Code and those amounts to be collected pursuant to the
10 Emergency Telephone Users Surcharge Act (Part 20 (commencing
11 with Section 41001)). The board shall post those amounts on its
12 Internet Web site not less than ____ days prior to the date on which
13 those amounts shall go into effect as the new amount of the state
14 component.

15 (c) It is the intent of the Legislature to develop a method for
16 sellers to also collect a local component if the retail transaction
17 occurs within a local governmental jurisdiction that has elected to
18 impose such a charge, or more than one such charge.

19 (d) *A seller collecting prepaid communications charges pursuant*
20 *to this part may rely upon the accuracy of the information posted*
21 *on the board's Internet Web site in collecting those charges.*

22 ~~(d)~~

23 (e) The amount of the prepaid communications charge shall be
24 separately stated on an invoice, receipt, or other similar document
25 that is provided to the consumer by the seller or otherwise disclosed
26 to the consumer. The seller may, but is not required to, separately
27 provide the state component and local component of the prepaid
28 communications charge.

29 42012. For purposes of this chapter, a retail transaction occurs
30 in this state, and within a local governmental jurisdiction of the
31 state, under any of the following circumstances:

32 (a) The consumer makes the retail transaction in person at a
33 business location in the state or local jurisdiction.

34 (b) If subdivision (a) is not applicable, the product is delivered
35 to the consumer by mail or other form of shipping to an address
36 in the state that the consumer supplies to the seller for purposes
37 of mailing or shipping.

38 (c) If neither subdivision (a) nor (b) is applicable, the seller's
39 records, maintained in the ordinary course of business, indicate

1 that the consumer's address is in the state and the records are not
2 made or kept in bad faith.

3 (d) If subdivisions (a), (b), and (c) are not applicable, the
4 consumer gives an address in the state during consummation of
5 the sale, including the consumer's payment instrument if no other
6 address is available, and the address is not given in bad faith.

7 (e) If subdivisions (a), (b), (c), and (d) are not applicable, the
8 calling number for the mobile telephony service communications
9 device is associated with an area code located in California.

10 42014. The prepaid communications charge is the liability of
11 the consumer and not of the seller or of any provider, except that
12 the seller shall be liable to remit all prepaid communications
13 charges that the seller collects from consumers pursuant to Chapter
14 3 (commencing with Section 42020), including all charges that
15 the seller is deemed to collect where the amount of the charge has
16 not been separately stated on an invoice, receipt, or other similar
17 document provided to the consumer by the seller.

18 42016. (a) If prepaid mobile telephony services are sold with
19 one or more other products for a single, nonitemized price, then
20 the prepaid communications charge shall apply to the entire
21 nonitemized price unless the seller elects to apply the charge to
22 either of the following:

23 (1) If the purchase price for the prepaid mobile telephony
24 services component of the bundled charge is disclosed to the
25 consumer, the prepaid communications charge shall be calculated
26 based upon that amount.

27 (2) If the seller can identify the portion of the bundled price that
28 is attributable to supplying prepaid mobile telephony services by
29 reasonable and verifiable standards from its books and records that
30 are kept in the regular course of business for other purposes,
31 including nontax purposes, the prepaid communications charge
32 shall be calculated based upon that amount.

33 (b) If a minimal amount of prepaid mobile telephony service is
34 sold for a single, nonitemized price with a mobile telephony service
35 communications device, commonly termed a cellular telephone,
36 the seller may elect not to apply the prepaid communications charge
37 to the transaction. For these purposes, a service allotment
38 denominated as 10 minutes or less, or five dollars (\$5) or less, is
39 a minimal amount.

CHAPTER 3. ADMINISTRATION

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42020. (a) All prepaid communications charges collected by sellers shall be remitted to the board pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). Not later than _____, the board shall establish registration and payment procedures for sellers consistent with the Fee Collection Procedures Law.

(b) A seller shall be permitted to deduct and retain _____ percent of the prepaid communications charges that are collected by the seller from consumers.

(c) The audit and appeal procedures of the Fee Collection Procedures Law (Part 30 (commencing with Section 55601)) shall apply to the collection and remittance of prepaid communications charges.

(d) The board shall establish procedures to be utilized by a seller to document that a sale is not a retail transaction.

(e) Within 30 days of receipt, and after deducting an amount not to exceed _____ percent of the collected prepaid communications charges retained by the board to reimburse its direct costs of administering the collection and remittance of prepaid communications charges, the board shall pay all remitted prepaid communications charges as follows:

(1) The state component shall be remitted as follows:

(A) To the California Technology Agency, that portion of the state component collected pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)).

(B) To the Public Utilities Commission, that portion of the state component collected for those charges authorized by the commission identified in paragraph (2) of subdivision (a) of Section 42004.

(2) The local component shall be remitted to the local government.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SEC. 3.~~

4 *SEC. 4.* This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order to provide a *standardized* collection mechanism as soon
9 as possible by which state and local charges can be collected from
10 end-users of prepaid mobile telephony services, thereby permitting
11 needed financial support for programs necessary to serve the public
12 or telecommunications users, it is necessary that this act take effect
13 immediately.