AMENDED IN ASSEMBLY APRIL 16, 2013

california legislature—2013–14 regular session

ASSEMBLY BILL No. 300

Introduced by Assembly Member Perea

February 12, 2013

An act to amend Sections 224.4 and 431 of, and to add Section 316 to, the Public Utilities Code, and to amend Sections 41020 and 41030 of, to add Part 21 (commencing with Section 42000) to, and to add Part 21.1 (commencing with Section 42100) 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 300, as amended, Perea. Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(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. Amounts are determined annually by the Department of Technology, and upon collection 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 (PUC) 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 PUC 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 PUC, except for a railroad corporation. The PUC 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 PUC 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 PUC to impose charges for the purpose of funding those programs. Pursuant to this authority, the PUC has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge and Collection Act. The bill would establish a prepaid MTS surcharge, 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 MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, 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 deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. The bill would require the PUC to annually compute the PUC's reimbursement fee and 6 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, which would be adjusted, as specified, and together would be the PUC surcharges. The bill would require the Department of Technology to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services to post notice of those charges and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge.

Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

Existing law defines mobile telephony services for purposes of the Public Utilities Code.

This bill would revise that definition and incorporate that definition for purposes of the Prepaid Mobile Telephony Service Surcharge and Collection Act.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2015, and before _____, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate specified in an ordinance adopted pursuant to existing law, and would instead state that the intent of the Legislature is to establish a tiered method for collection of the utility user rate tax. In addition, the bill would, on or after January 1, 2015, and before_____, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, on access to communication services or access to local "911" emergency telephone systems, in the city, county, or city and county at the rate as specified in an ordinance adopted pursuant to existing law, and would instead require the charge rate to be applied during that period under any ordinance to be at specified rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge and Collection Act. This bill would specify that a change in a utility user tax rate or access charge rate resulting from either the rate limitations or the end of the period of on and after January 1, 2015, and before ____ is not subject to voter approval under either statute or Article XIII ? C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the

State Board of Equalization and transmitted to the city, county, or a city and county.

(3) 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.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 224.4 of the Public Utilities Code is amended to read:

224.4. (a) "Mobile data service" means the delivery of nonvoice information over a radio band licensed by the Federal Communications Commission, to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. "Mobile data service" includes mobile broadband service offering connectivity over a radio band licensed by the Federal Communications Commission. Unless specified to the contrary, "mobile data service" does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a "Wi-Fi" network.

(b) "Mobile paging service" means the transmission of coded radio signals over a radio band licensed by the Federal Communications Commission, for the purpose of activating specific small radio receivers designed to be carried by a person and to give an aural, visual, or tactile indication when activated.

(c) “Mobile satellite telephone service” means voice communication to end users over a mobile satellite service involving the provision of commercial mobile radio service, pursuant to Parts 20 and 25 of Title 47 of the Code of Federal Regulations.

(d) “Mobile telephony service” means commercially available interconnected mobile phone services that provide voice communication access to the public switched telephone network (PSTN) by way of mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), digital Specialized Mobile Radio (SMR), or another radio band licensed by the Federal Communications Commission. “Mobile telephony services” does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

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

316. (a) The commission shall annually, on or before October 1~~,~~ of each year, commencing October 1, 2014, compute a reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before October 15 of each year, commencing October 15, 2014, the commission shall post notice of the reimbursement fee on its Internet Web site and notify the State Board of Equalization of this information.

(b) The commission shall annually, on or before October 1 of each year, commencing October 1, 2014, compute the cumulative of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code). On or before October 15 of each year, commencing October 15, 2014, the commission shall post notice of the cumulative surcharge on its Internet Web site and notify the State Board of Equalization of this information.

(c) (1) ~~Nothing in this section restricts~~ *This section does not restrict* the commission's authority to adjust reimbursement fees or universal service fees or requires that they only be adjusted once annually.

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

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

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

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

(d) The commission shall have enforcement authority to ensure the proper remittances over retail transactions, pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code), where the prepaid mobile telephony services (Prepaid MTS) provider is also the seller.

SEC. 3. Section 431 of the Public Utilities Code is amended to read:

431. (a) The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission other than a railroad, except as otherwise provided in Article 2 (commencing with Section 421), for common ~~carries~~ *carriers* and related businesses, and as otherwise provided in Section 316, for prepaid mobile telephony service providers.

(b) The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

(c) This article shall not apply to any electrical cooperative as defined in Chapter 5 (commencing with Section 2776) of Part 2.

SEC. 4. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) Intrastate telephone communication service in this state. The surcharge shall be applied to prepaid mobile telecommunications services pursuant to the Prepaid Mobile Telephony Surcharge and Collection Act (Part 21 (commencing with Section 42000)), and the calculation of the intrastate portion of charges for prepaid mobile telecommunications services shall be made pursuant to paragraph (1) of subdivision (b) of Section 42010.

(2) VoIP service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service supplier's business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier's contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 through December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the

application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The

term “customer” does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider’s licensed service area.

(3) “Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) “VoIP service provider” means that provider of VoIP service with whom the end user customer contracts for the provision of VoIP services for the customer’s own use and not for resale.

SEC. 5. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. (a) The Department of Technology shall determine annually, on or before October 1, to be effective on January 1 of the following year, a surcharge pursuant to subdivision (b) that it estimates will produce sufficient revenue to fund the current fiscal year’s 911 costs.

(b) The surcharge shall be determined by dividing the costs (including incremental costs) the Department of Technology estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services, the interstate portion of prepaid mobile telecommunications services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent. In making its estimate of charges that are applicable to the intrastate portion of prepaid mobile telecommunications services, the Department of Technology shall multiply the surcharge by the inverse of the interstate safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, consistent with the methodology to be used by the board to calculate the prepaid MTS surcharge pursuant to paragraph (1) of subdivision (b) of Section 42010.

(c) The Department of Technology shall notify the board of the surcharge amount by October 15 of each year, commencing with October 15, 2014. The board shall utilize the surcharge amount to calculate the emergency telephone users surcharge component of the prepaid MTS surcharge pursuant to paragraph (1) of subdivision (b) and subdivision (d) of Section 42010.

SEC. 6. Part 21 (commencing with Section 42000) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. PREPAID MOBILE TELEPHONY SERVICES SURCHARGE AND COLLECTION ACT

Chapter 1. General Provisions and Definitions

42000. This part shall be known, and may be cited, as the Prepaid Mobile Telephony Services Surcharge and Collection Act.

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

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

(b) Providers of end-use communications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit communications taxes, fees, and surcharges on various types of communication service revenues, as provided by existing state or local law.

(c) Consumers purchase prepaid mobile telephony services at a wide variety of retail locations and other distribution channels, as well as through service providers.

(d) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaidmobile telephony services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.

(e) To ensure equitable contributions from end-use consumers of postpaid and prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services.

(f) Prepaid mobile telephony services are frequently sold by a third-party retailer that is not the provider of mobile telephony services, and collecting taxes, fees, and surcharges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means of collection.

(g) An equitable distribution mechanism is necessary to ensure that utility user taxes and other telecommunication charges are collected on behalf of cities and counties and are properly distributed to those jurisdictions.

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

(a) “Board” means the State Board of Equalization.

(b) “Emergency telephone users surcharge” means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) to be billed and collected from prepaid consumers of mobile telephony services.

(c) “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(d) “Local charges” means those charges described in subdivision (a) of Section 42101.

(e) “Local jurisdiction” means a city, county, or city and county, which includes a charter city, county, or city and county.

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

(g) “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

(h) “Prepaid consumer” means a person who purchases prepaid mobile telephony services in a retail transaction.

(i) “Prepaid mobile telephony services” means the right to utilize a mobile device authorized by the Federal Communications Commission for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that is purchased in advance of usage in predetermined units or dollars, with the right of usage declining in a known amount upon being used. For these purposes, “telecommunications service” and “information service” have the same meanings as defined in Section 153 of Title 47 of the United States Code.

(j) "Prepaid MTS provider" means a person that provides prepaid mobile telephony services pursuant to a license issued by the Federal Communications Commission.

(k) "Prepaid MTS surcharge" means a unitary surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010.

(*l*) "Public Utilities Commission surcharges" means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications services, and of which the commission provides the board with notice pursuant to Section 316 of the Public Utilities Code, including:

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

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

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

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

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

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

(7) Public Utilities Commission reimbursement fees imposed pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.

(m) "Retail transaction" means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a "purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise.

(n) "Seller" means a person that sells prepaid mobile telephony service to a prepaid consumer.

Chapter 2. The Prepaid Mobile Telephony Services Surcharge

42010. (a) (1) On and after January 1, 2015, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction for prepaid mobile telephony services in the state. The prepaid MTS surcharge shall be collected as a percentage of the amount of each retail transaction that occurs in this state.

(2) The prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2014, by adding the following:

(1) The surcharge rate established pursuant to Section 41030 as of October 1 of each year, which shall be the surcharge rate established for intrastate telephone communication service in this state multiplied by the inverse of the interstate wireless safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, as these percentages may be revised from time to time.

(2) The Public Utilities Commission surcharges, established by the commission pursuant to Section 316 of the Public Utilities Code, as of October 1 of each year, multiplied by the inverse of the interstate wireless safe harbor percentage established by the Federal Communications Commission for federal universal service contribution purposes, as these percentages may be revised from time to time.

(c) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Section 42012, that each local jurisdiction has adopted, not later than November 15 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1 following the posting, except that if a local agency notifies the board pursuant to subdivision (b) of

Section 42012 that it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased since the previous October 1 calculation, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.2 (commencing with Section 42100) may rely upon the accuracy of the information posted on the board's Internet Web site in collecting the state surcharge and local charges.

(d) Except for amounts retained pursuant to subdivision (e), all amounts of the prepaid MTS surcharge and local charges collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

(e) A seller shall be permitted to deduct and retain an amount equal to 3 percent of the amounts that are collected by the seller from prepaid consumers for the prepaid MTS surcharge and local charges.

(f) The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed to the prepaid consumer, at the time of the retail transaction.

(g) The prepaid MTS surcharge and any local charges are required to be collected by a seller and any amount unreturned to the prepaid consumer of mobile telephony services that is not owed as part of the surcharge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharge, constitute debts owed by the seller to this state.

(h) (1) Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until they have been paid to this state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the surcharge and local charges. Any surcharge collected from a prepaid consumer that has not been remitted to the board shall be a debt owed to the state by the person required to collect and remit the surcharge. Nothing in this part shall impose any obligation upon a seller to take any legal action to enforce the collection of the surcharge imposed by this section and local charges.

(2) A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of mobile telephony services by this part to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

42012. (a) A local agency that has enacted ~~a~~ local charges shall provide the board with notice of the amount or level of charges that is applicable to prepaid mobile telephony service, expressed as a percentage of the sales price of prepaid mobile telephony services, on or before each October 15, commencing October 15, 2014. If any local charges are for a fixed amount for a specified period of time, the local agency shall notify the board of any such local charge that is applicable to prepaid mobile telephony services on or before October 15 of each year.

(b) A local agency that has enacted local charges shall immediately notify the board of any reduction or elimination of charges that are applicable to prepaid mobile telephony services.

42014. (a) For purposes of this part, a retail transaction occurs in the state under any of the following circumstances:

(1) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(2) If paragraph (1) is not applicable, the prepaid consumer's address is in the state (known-address transaction). A known-address transaction occurs in the state under any of the following circumstances:

(A) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(B) The prepaid consumer is being billed for the retail transaction at an address in the state.

(C) If the prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business, indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.

(D) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the ~~a~~ payment instrument if no other address is available and the address is not given in bad faith.

(b) A retail transaction shall occur at only one location for purposes of determining local charges. If the retail transaction is a point-of-sale transaction, the consumption of, or access to, the prepaid mobile telephony service shall be presumed to be at that location. If the retail transaction is a known-address transaction, the location shall be as determined in descending order beginning with subparagraph (A) of paragraph (2)~~,~~ if subparagraph (A) is inapplicable, then pursuant to subparagraph (B)~~,~~ if both subparagraph (A) and (B) are inapplicable~~,~~ then subparagraph (C), and if subparagraphs (A), (B), and (C) are inapplicable, then subparagraph (D).

(c) (1) The board may make software available to sellers to enable a seller to match the location of a retail transaction to the applicable prepaid MTS surcharge amount and local charges.

(2) A seller that relies in good faith on information provided by the board to match the location of a point-of-sale transaction to the applicable prepaid MTS surcharge amount and local charges, collects that amount from the prepaid consumer, and remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer.

(3) For a known-address transaction, the seller may collect the prepaid MTS surcharge and local charges that corresponds to the five digit postal ZIP Code of the prepaid consumer's address. A seller that relies in good faith on information provided by the board to match the five digit postal ZIP Code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charges amount, collects that amount from the prepaid consumer, and remits the amount to the board in compliance with this part, shall not be liable for any additional MTS surcharge or local tax and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer. If the five digit postal ZIP Code of the prepaid consumer's address corresponds to more than one local charge and the amount collected and remitted to the board corresponds to one of the local charges that is applicable to that ZIP Code, the seller shall not be liable for any additional local

charges and shall not be required to refund any local charges collected and paid to the board to the prepaid consumer.

42016. The prepaid MTS surcharge and local charges are imposed on the prepaid consumer of mobile telephony services and not on the seller or of any prepaid MTS provider, except that the seller shall collect and remit all of the prepaid MTS surcharges and local charges pursuant to this part and Part 21.1 (commencing with Section 42100).

42018. (a) If prepaid mobile telephony services are sold with one or more other products for a single, nonitemized price, then the prepaid MTS surcharge and local charges shall apply to the entire nonitemized price unless the seller elects to apply the surcharge and local charges to either of the following:

(1) If the purchase price for the prepaid mobile telephony services component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written documentation, the prepaid MTS surcharge and local charges may be calculated based upon that amount.

(2) If the seller can identify the portion of the bundled price that is attributable to supplying prepaid mobile telephony services by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including nontax purposes, the prepaid MTS surcharge and local charges may be calculated based upon that amount.

(b) If a minimal amount of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, commonly termed a cellular telephone, the seller may elect not to apply the prepaid MTS surcharge or local charges to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars ($5) or less, is a minimal amount.

Chapter 3. Administration

42020. (a) The board shall administer the prepaid MTS surcharge imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the prepaid MTS surcharge imposed by this part, and references to "feepayer" shall include a person required to pay the surcharge imposed by this part, which includes the seller, who shall be required to register with the board. The audit, refund, and appeal procedures of the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) shall apply to the collection and remittance of the prepaid MTS surcharge.

(b) (1) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

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

(d) The board shall establish procedures for sharing of information, other than information protected under Section 19542, related to the collection of the prepaid MTS surcharge upon the request of the Public Utilities Commission or the Department of Technology.

42021. (a) The prepaid MTS surcharge, minus the amount retained by the seller pursuant to subdivision (e) of Section 42010, is due and payable to the board quarterly on or before the last day of the month next succeeding each quarterly period.

(b) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed using electronic media with the board.

(c) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

42022. Every seller shall register with the board. Every application for registration shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and such other information as the board may require. An application for ~~an~~ registration shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

42023. (a) The Prepaid Mobile Telephony Services Surcharge Fund is hereby created in the State Treasury. The Prepaid MTS 911 Account and the Prepaid MTS PUC Account are hereby created in the fund. The Prepaid Mobile Telephony Services Surcharge Fund shall consist of all surcharges, interest, penalties, and other amounts collected and paid to the board pursuant to this part, less a deduction in an amount not to exceed 2 percent of the collected amounts to refund and reimburse the board for expenses incurred in the administration and collection of the prepaid MTS surcharge.

(b) All moneys in the Prepaid Mobile Telephony Services Surcharge Fund attributable to the prepaid MTS surcharge shall be deposited as follows:

(1) That portion of the prepaid MTS surcharge that is for the emergency telephone users surcharge shall be deposited into the Prepaid MTS 911 Account.

(2) That portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges shall be deposited into the Prepaid MTS PUC Account.

(c) Moneys in the Prepaid MTS 911 Account and the Prepaid MTS PUC Account may be appropriated by the Legislature only for the purposes for which the moneys were collected. All moneys collected pursuant to this part shall be allocated only to the entities specified in this section and shall not be used for any other purpose, including, but not limited to, loans, transfers, or uses for any other purpose, funds, or account.

SEC. 7. Part 21.1 (commencing with Section 42100) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21.1. LOCAL PREPAID MOBILE TELEPHONY SERVICES COLLECTION ACT

42100. (a) This part shall be known and may be cited as the Local Prepaid Mobile Telephony Services Collection Act.

(b) It is a matter of statewide concern that local prepaid mobile telephony services be collected in a uniform manner~~ and for a limited number of rates~~ in order for the collection *to* be fair and uniform on a statewide basis.

42101. For purposes of this part, all of the following definitions shall apply:

(a) “Local charge” means the utility user taxes as described in Section 42102, and charges for access to communication services or to local “911” emergency telephone systems, as described in Section 42103.

(b) “Prepaid mobile telephony services” has the same meaning as that term is defined in the Prepaid Mobile Telephony Services Surcharge and Collection Act (Part 21 (commencing with Section 42000)).

42101.5. On and after January 1, 2015, and before ____, a local charge imposed on the consumption of prepaid mobile telephony services shall be collected from the prepaid consumer at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Section 42000), in lieu of collection of those local charges by the city, county, or city and county, including a charter city, county, or city and county.

42102. (a) Notwithstanding any other law, on and after January 1, 2015, and before _____, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a utility user tax rate on the consumption of prepaid mobile telephony service in the city, county, or city and county at the rate as specified in an ordinance authorized pursuant to Section 7284.2 or any other law is suspended, and it is the intent of the Legislature to create a tiered method for collection of the utility user tax rate.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in a utility user tax rate resulting from either the suspension of, or the termination of the suspension of, a utility user rate adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a utility user tax at any rate on the consumption of communication services, including a utility user tax on the consumption of prepaid mobile telephony service, except that during the period on and after January 1, 2015, and before ____, any utility user tax rate on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42102.5. (a) Notwithstanding any other law, on and after January 1, 2015, and before _____, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate as specified in an ordinance is suspended, and the rate to be applied instead during that period under any ordinance as so adopted is the applicable of the following:

(1) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate of less than ____ dollars ($____) per month per access line, including any adjustments for inflation, the rate shall be 0 percent.

(2) In the case of a city, county, or city and county that has adopted an ordinance to impose a charge, that applies to prepaid mobile telephony service, for access to communication services or access to local "911" emergency telephone systems in the city, county, or city and county at the rate of ____ dollars ($____) per month per access line, including any adjustments for inflation, or more but less than ____ dollars ($____) per month per access line, including any adjustments for inflation, the rate shall be the percentage obtained by dividing ____ by fifty, rounded up to the nearest one-tenth of 1 percent.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in an access charge rate resulting from either the suspension of, or the termination of the suspension of, a charge adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII ? C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a charge at any rate, that applies to prepaid mobile telephony services, for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county, except that during the period on and after January 1, 2015, and before ____, any charge on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42103. (a) The board shall perform all functions incident to the administration and collection of the local charges of a city, county, or a city and county, and shall collect and administer the local charges in the manner as prescribed for the collection and administration of the prepaid MTS surcharge in the Prepaid Mobile Telephony Services Surcharge and Collection Act (Part 21 (commencing with Section 42000)).

(b) All local charges imposed by a city, county, or city and county collected by the board may be deposited in the Prepaid Mobile Telephony Services Surcharge Fund, created by Section 42023, and may be drawn from that fund to make refunds, to compensate the board for its cost of administration of this part in an amount not to exceed 2 percent of the collected amounts, and shall be transmitted to the city, county, or city and county periodically as promptly as feasible. The transmittals required under this section shall be made at least once in each calendar quarter. The board shall furnish a statement indicating the amounts paid and withheld.

(c) The board shall prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

42105. (a) The city, county, or city and county shall reimburse the board for, and hold the board harmless from, any and all costs, losses, or refunds of any kind whatsoever.

(b) In the event that a legal action is commenced challenging the validity of the local charge in its entirety, as opposed to its application to an individual taxpayer, the city, county, or city and county shall place the local charge proceeds into an interest-bearing escrow account until the legality of the local charge is finally resolved by a final and nonappealable decision rendered by a court of competent jurisdiction. That provision shall be enforceable by any interested person in a proceeding for a writ of mandate.

(c) The city, county, or city and county shall be entitled to indemnity for any and all costs, losses, or refunds from any entity, except the state, that participated in the imposition of the tax. For the purposes of this part, "participated" means any involvement in procuring the legislation that authorized the tax, or in enacting or administering the ordinance imposing the tax. Any organization that is a member of the legislative body of the district imposing the tax has participated in the imposition of the tax within the meaning of this section.

42106. (a) For purposes of this section:

(1) "Quarterly local charges" means the total amount of local charges transmitted by the board to a city, county, or city and county for a calendar quarter.

(2) "Refund" means the amount of local charges deducted by the board from a city's, county's, or city and county's quarterly local charges in order to pay the city's, county's, or city and county's share of a local charge refund due to one taxpayer.

(3) "Offset portion" means that portion of the refund which exceeds the greater of fifty thousand dollars ($50,000) or 20 percent of the city's, county's, or city and county's quarterly local charges.

(b) Except as provided in subdivision (c), if the board has deducted a refund from a city's, county's, or city and county's quarterly local charges which includes an offset portion, then the following provisions apply:

(1) Within three months after the board has deducted an offset portion, the city, county, or city and county may request the board to transmit the offset portion to the city, county, or city and county.

(2) As promptly as feasible after the board receives the city's, county's, or city and county's request, the board shall transmit to the city, county, or city and county the offset portion as part of the board's periodic transmittal of local charges.

(3) The board shall thereafter deduct a pro rata share of the offset portion from future transmittals of local charges to the city, county, or city and county over a period to be determined by the board, but not less than two calendar quarters and not more than eight calendar quarters, until the entire amount of the offset portion has been deducted.

(c) The board shall not transmit the offset portion of the refund to the city, county, or city and county if that transmittal would reduce or delay either the board's payment of the refund to the taxpayer or the board's periodic transmittals of local charges to other cities, counties, or city and county.

42107. The city, county, or city and county shall pay to the board its costs of preparation to administer the collection of local charges. The city, county, or city and county shall pay such costs monthly as incurred and billed by the board. Such costs include all preparatory costs, including costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing of forms, developing instructions for the board's staff and for taxpayers, and other necessary preparatory costs which shall include the board's direct and indirect costs as specified by Section 11256 of the Government Code. Any disputes as to the amount of preparatory costs incurred shall be resolved by the Director of Finance, and his or her decision shall be final. The maximum amount of all preparatory costs to be paid by the city, county, or city and county shall not, in any event, exceed ____ thousand dollars ($____).

42108. (a) There shall be no recovery from the state for the imposition of any unconstitutional or otherwise invalid local charge that is collected pursuant to this part.

(b) If a final and nonappealable decision of a court of competent jurisdiction determines that a local charge is unconstitutional or otherwise invalid, the city, the county, or the city and county, as the case may be, shall transfer to the board the revenues derived from the unconstitutional or invalid local charge necessary to reimburse claimants for the unconstitutional or invalid local charge paid, including interest allowed under Section 6907. The board shall deposit these revenues in a segregated impound account in the Prepaid Mobile Telephony Services Surcharge Fund, and shall administer any refunds necessitated in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)).

42109. The board shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering the collection of local charges pursuant to this part.

42110. The board or any person authorized in writing by it may examine the books, papers, records, and equipment of any person selling prepaid mobile telephony services and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

SEC. 8. 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 the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

CORRECTIONS:

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