

AMENDED IN ASSEMBLY JUNE 3, 2013

AMENDED IN ASSEMBLY MAY 21, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 300**

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**Introduced by Assembly Member Perea**

February 12, 2013

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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, or 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 require the utility user tax rate to be applied during that period under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge and Collection Act. 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 suspension period 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, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

This bill would allow a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

(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:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

1 SECTION 1. Section 224.4 of the Public Utilities Code is  
 2 amended to read:  
 3 224.4. (a) “Mobile data service” means the delivery of  
 4 nonvoice information over a radio band licensed by the Federal  
 5 Communications Commission, to a mobile device and includes  
 6 nonvoice information communicated to a mobile telephony services  
 7 handset, nonvoice information communicated to handheld personal  
 8 digital assistant (PDA) devices and laptop computers, and mobile  
 9 paging service carriers offering services on pagers and two-way  
 10 messaging devices. “Mobile data service” includes mobile  
 11 broadband service offering connectivity over a radio band licensed  
 12 by the Federal Communications Commission. Unless specified to

1 the contrary, “mobile data service” does not include nonvoice  
2 information communicated through a wireless local area network  
3 operating in the unlicensed radio bands, commonly known as a  
4 “Wi-Fi” network.

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

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

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

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

28 316. (a) The commission shall annually, on or before October  
29 1 of each year, commencing October 1, 2014, compute a  
30 reimbursement fee as a percentage of the sales price for prepaid  
31 mobile telephony services, to be effective on January 1 of the  
32 following year and to be collected and remitted pursuant to the  
33 Prepaid Mobile Telephony Services Surcharge and Collection Act  
34 (Part 21 (commencing with Section 42000) of Division 2 of the  
35 Revenue and Taxation Code). On or before October 15 of each  
36 year, commencing October 15, 2014, the commission shall post  
37 notice of the reimbursement fee on its Internet Web site and notify  
38 the State Board of Equalization of this information.

39 (b) The commission shall annually, on or before October 1 of  
40 each year, commencing October 1, 2014, compute the cumulative

1 of the telecommunications universal service surcharges as a  
2 percentage of the sales price for prepaid mobile telephony services,  
3 to be effective on January 1 of the following year and to be  
4 collected and remitted pursuant to the Prepaid Mobile Telephony  
5 Services Surcharge and Collection Act (Part 21 (commencing with  
6 Section 42000) of Division 2 of the Revenue and Taxation Code).  
7 On or before October 15 of each year, commencing October 15,  
8 2014, the commission shall post notice of the cumulative surcharge  
9 on its Internet Web site and notify the State Board of Equalization  
10 of this information.

11 (c) (1) This section does not restrict the commission's authority  
12 to adjust reimbursement fees or universal service fees or require  
13 that they only be adjusted once annually.

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

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

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

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

38 (d) The commission shall have enforcement authority to ensure  
39 the proper remittances over retail transactions, pursuant to the  
40 Prepaid Mobile Telephony Services Surcharge and Collection Act

1 (Part 21 (commencing with Section 42000) of Division 2 of the  
2 Revenue and Taxation Code), where the prepaid mobile telephony  
3 services (Prepaid MTS) provider is also the seller.

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

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

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

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

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

28 41020. (a) A surcharge is hereby imposed on amounts paid  
29 by every person in the state for both of the following:

30 (1) Intrastate telephone communication service in this state. The  
31 surcharge shall be applied to prepaid mobile telecommunications  
32 services pursuant to the Prepaid Mobile Telephony Services  
33 Surcharge and Collection Act (Part 21 (commencing with Section  
34 42000)), and the calculation of the intrastate portion of charges  
35 for prepaid mobile telecommunications services shall be made  
36 pursuant to paragraph (1) of subdivision (b) of Section 42010.

37 (2) VoIP service that provides access to the “911” emergency  
38 system by utilizing the digits 9-1-1 by any service user in this state  
39 commencing on January 1, 2009. The surcharge shall not apply to

1 charges for VoIP service where any point of origin or destination  
2 is outside of this state.

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

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

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

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

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

35 (3) If a service supplier reasonably relies upon books and  
36 records kept in the regular course of business or any documentation  
37 that satisfies the reasonable and verifiable method, then the service  
38 supplier's determination of the portion of the billed amount  
39 attributable to services not subject to the surcharge shall be  
40 rebuttably presumed to be correct. The service supplier's choice

1 of books and records or other method and surcharge billing practice  
2 shall also be rebuttably presumed to be fair and legal business  
3 practices.

4 (4) It is the intent of the Legislature that the provisions of  
5 subparagraph (C) shall not be considered to be a precedent for the  
6 application of the surcharge or any other tax or fee where a person  
7 is required to collect a tax or fee imposed upon another.

8 (c) The surcharge imposed shall be at the rate of one-half of 1  
9 percent of the charges made for such services to and including  
10 November 1, 1982, and thereafter at a rate fixed pursuant to Article  
11 2 (commencing with Section 41030).

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

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

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

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

29 (f) For purposes of this section:

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

39 (2) "Customer" means (A) the person or entity that contracts  
40 with the home service provider for mobile telecommunications

1 services, or with a VoIP service provider for VoIP service, or (B)  
2 if the end user of mobile telecommunications services or VoIP  
3 service is not the contracting party, the end user of the mobile  
4 telecommunications service or VoIP service. This paragraph applies  
5 only for the purpose of determining the place of primary use. The  
6 term “customer” does not include (A) a reseller of mobile  
7 telecommunications service or VoIP communication service, or  
8 (B) a serving carrier under an arrangement to serve the mobile  
9 customer outside the home service provider’s licensed service  
10 area.

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

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

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

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

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

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

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

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

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

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

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

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

13 41030. (a) The Department of Technology shall determine  
14 annually, on or before October 1, to be effective on January 1 of  
15 the following year, a surcharge pursuant to subdivision (b) that it  
16 estimates will produce sufficient revenue to fund the current fiscal  
17 year’s 911 costs.

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

38 (c) The Department of Technology shall notify the board of the  
39 surcharge amount by October 15 of each year, commencing with  
40 October 15, 2014. The board shall utilize the surcharge amount to

1 calculate the emergency telephone users surcharge component of  
2 the prepaid MTS surcharge pursuant to paragraph (1) of subdivision  
3 (b) and subdivision (d) of Section 42010.

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

6

7 PART 21. PREPAID MOBILE TELEPHONY SERVICES  
8 SURCHARGE AND COLLECTION ACT

9

10 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

11

12 42000. This part shall be known, and may be cited, as the  
13 Prepaid Mobile Telephony Services Surcharge and Collection Act.

14 42002. The Legislature finds and declares all of the following:

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

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

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

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

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

39 (f) Prepaid mobile telephony services are frequently sold by a  
40 third-party retailer that is not the provider of mobile telephony

1 services, and collecting taxes, fees, and surcharges from prepaid  
2 consumers of mobile telephony services at the time of the retail  
3 transaction is necessary and the most efficient and competitively  
4 neutral means of collection.

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

9 42004. For purposes of this part, the following terms have the  
10 following meanings:

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

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

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

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

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

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

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

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

35 (i) “Prepaid mobile telephony services” means the right to utilize  
36 a mobile device authorized by the Federal Communications  
37 Commission for mobile telecommunications services or  
38 information services, including the download of digital products  
39 delivered electronically, content, and ancillary services, or both  
40 telecommunications services and information services, that must

1 be purchased in advance of usage in predetermined units or dollars,  
2 with the right of usage declining in a known amount. For these  
3 purposes, “telecommunications service” and “information service”  
4 have the same meanings as defined in Section 153 of Title 47 of  
5 the United States Code.

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

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

13 (l) “Public Utilities Commission surcharges” means surcharges  
14 authorized by the Public Utilities Commission to be billed and  
15 collected from end-use consumers of wireless communications  
16 services, and of which the commission provides the board with  
17 notice pursuant to Section 316 of the Public Utilities Code,  
18 including:

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

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

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

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

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

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

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

38 (m) “Retail transaction” means the purchase of prepaid mobile  
39 telephony services, either alone or in combination with mobile  
40 data services, from a seller for any purpose other than resale in the

1 regular course of business. For these purposes, a “purchase” means  
2 any transfer of title or possession, exchange, or barter, conditional  
3 or otherwise.

4 (n) “Seller” means a person that sells prepaid mobile telephony  
5 service to a prepaid consumer.

6

7 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES  
8 SURCHARGE

9

10 42010. (a) (1) On and after January 1, 2015, a prepaid MTS  
11 surcharge shall be imposed on each prepaid consumer and shall  
12 be collected by a seller from each prepaid consumer at the time of  
13 each retail transaction for prepaid mobile telephony services in  
14 this state. The prepaid MTS surcharge shall be collected as a  
15 percentage of the amount of each retail transaction that occurs in  
16 this state.

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

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

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

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

39 (c) (1) The board shall post, for each local jurisdiction, the  
40 combined total of the rates of prepaid MTS surcharge and the rate

1 or rates of local charges, as calculated pursuant to Section 42012,  
2 that each local jurisdiction has adopted, not later than December  
3 1 of each year, on its Internet Web site. The posted combined rate  
4 shall be the rate that applies to all retail transactions during the  
5 calendar year beginning January 1 following the posting.

6 (2) Notwithstanding paragraph (1), if a local agency notifies  
7 the board pursuant to subdivision (b) of Section 42012 that it no  
8 longer imposes a local charge or local charges or that the rate of  
9 its local charge or local charges has decreased since the previous  
10 October 1 calculation, the board shall promptly post a recalculated  
11 rate that is applicable to the jurisdiction of that local agency. The  
12 seller shall not be required to implement the changes any earlier  
13 than 60 days from the date on which the board posts the new rate  
14 and provides written notification to the seller. If the 60th day is  
15 not the first day of a month, then the seller shall implement the  
16 changes on the first day of the month following the month in which  
17 the 60th day occurs. Nothing in this section modifies the notice  
18 obligations of Section 799 of the Public Utilities Code.

19 (3) A seller collecting the prepaid MTS surcharge and local  
20 charges pursuant to this part and Part 21.2 (commencing with  
21 Section 42100) may rely upon the accuracy of the information  
22 posted on the board's Internet Web site in collecting the state  
23 surcharge and local charges.

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

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

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

37 (g) The prepaid MTS surcharge and any local charges are  
38 required to be collected by a seller and any amount unreturned to  
39 the prepaid consumer of mobile telephony services that is not owed  
40 as part of the surcharge, but was collected from the prepaid

1 consumer under the representation by the seller that it was owed  
2 as part of the surcharge, constitute debts owed by the seller to this  
3 state.

4 (h) A seller that has collected any amount of prepaid MTS  
5 surcharge and local charges in excess of the amount of the  
6 surcharge imposed by this part and actually due from a prepaid  
7 consumer may refund that amount to the prepaid consumer, even  
8 though the surcharge amount has already been paid over to the  
9 board and no corresponding credit or refund has yet been secured.  
10 Any seller making a refund of any charge to a prepaid consumer  
11 may repay therewith the amount of the surcharge paid. The seller  
12 may claim credit for that overpayment against the amount of  
13 surcharge imposed by this part that is due upon any other quarterly  
14 return, provided the credit is claimed in a return dated no later than  
15 three years from the date of overpayment.

16 (i) (1) Every prepaid consumer of mobile telephony services  
17 in this state is liable for the prepaid MTS surcharge and any local  
18 charges until they have been paid to this state, except that payment  
19 to a seller registered under this part relieves the prepaid consumer  
20 from further liability for the surcharge and local charges. Any  
21 surcharge collected from a prepaid consumer that has not been  
22 remitted to the board shall be a debt owed to the state by the person  
23 required to collect and remit the surcharge. Any local charge  
24 collected from a prepaid consumer that has not been remitted to  
25 the board shall be a debt owed jointly to the state and to the local  
26 jurisdiction imposing the local charge by the person required to  
27 collect and remit the local charge. Nothing in this part shall impose  
28 any obligation upon a seller to take any legal action to enforce the  
29 collection of the surcharge or local charge imposed by this section.

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

39 42012. (a) A local agency that has enacted a local charge that  
40 is applicable to prepaid mobile telephony service, or in the future

1 enacts a new or increased local charge, shall provide the board  
 2 with written notice of the amount of the local 911 charge, as set  
 3 out in Section 42102.5, or the applicable tiered rate for a utility  
 4 user tax, as set out in Section 42102, on or before December 1,  
 5 commencing December 1, 2014, and for each year thereafter, and  
 6 that amount or rate shall be implemented by the sellers by no later  
 7 than April 1 of the subsequent year.

8 *(b) For each notice required in subdivision (a), the local agency*  
 9 *shall provide a certification that its ordinance applies to prepaid*  
 10 *mobile telephony services and that it agrees to indemnify, and hold*  
 11 *and save harmless, the board, its officers, agents, and employees*  
 12 *for any and all liability for damages that may result from collection*  
 13 *pursuant to the notice required in subdivision (a).*

14 ~~(b)~~

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

18 42014. (a) For purposes of this part, a retail transaction occurs  
 19 in the state under any of the following circumstances:

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

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

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

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

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

37 (D) The mobile telephone number is associated with a location  
 38 in this state.

39 (b) A retail transaction shall occur at only one location for  
 40 purposes of determining local charges. If the retail transaction is

1 a point-of-sale transaction, the consumption of, use of, or access  
2 to, the prepaid mobile telephony service shall be presumed to be  
3 at that location. If the retail transaction is a known-address  
4 transaction, the location shall be as determined in descending order  
5 beginning with subparagraph (A) of paragraph (2) of subdivision  
6 (a), if subparagraph (A) of that paragraph is inapplicable, then  
7 pursuant to subparagraph (B) of that paragraph, if both  
8 subparagraphs (A) and (B) of that paragraph are inapplicable, then  
9 subparagraph (C) of that paragraph, and if subparagraphs (A), (B),  
10 and (C) of that paragraph are inapplicable, then subparagraph (D)  
11 of that paragraph.

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

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

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

1 (4) A local agency may request the board to correct an error in  
2 the geocoding of a seller with a physical location within that local  
3 agency by submitting in writing a declaration of the correction,  
4 which is also signed by the local agency that is improperly  
5 receiving the local charge due to the error. Any correction request  
6 must be submitted on or before December 1, commencing  
7 December 1, 2014, and for each year thereafter, any correction  
8 shall be implemented by the sellers no later than April 1 of the  
9 subsequent year. For past errors in excess of \_\_\_\_\_, the board shall  
10 make appropriate adjustments to the future payments of the two  
11 affected local agencies to account for those errors. *For purposes*  
12 *of this paragraph, "geocoding" means matching a postal ZIP code*  
13 *of a prepaid customer's address to the applicable prepaid MTS*  
14 *surcharge and local charges.*

15 42016. The prepaid MTS surcharge and local charges are  
16 imposed on the prepaid consumer of mobile telephony services  
17 and not on the seller or on any prepaid MTS provider, except that  
18 the seller shall remit all collected prepaid MTS surcharges and  
19 local charges pursuant to this part and Part 21.1 (commencing with  
20 Section 42100).

21 42018. (a) If prepaid mobile telephony services are sold with  
22 one or more other products for a single, nonitemized price, then  
23 the prepaid MTS surcharge and local charges shall apply to the  
24 entire nonitemized price unless the seller elects to apply the  
25 surcharge and local charges to either of the following:

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

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

37 (b) If a minimal amount of prepaid mobile telephony service is  
38 sold for a single, nonitemized price with a mobile telephony service  
39 communications device, commonly termed a cellular telephone,  
40 the seller may elect not to apply the prepaid MTS surcharge or

1 local charges to the transaction. For these purposes, a service  
2 allotment denominated as 10 minutes or less, or five dollars (\$5)  
3 or less, is a minimal amount.

4  
5 CHAPTER 3. ADMINISTRATION  
6

7 42020. (a) The board shall administer the prepaid MTS  
8 surcharge imposed by this part pursuant to the Fee Collection  
9 Procedures Law (Part 30 (commencing with Section 55001)). For  
10 purposes of this part, the references in the Fee Collection  
11 Procedures Law to “fee” shall include the prepaid MTS surcharge  
12 imposed by this part, and references to “feepayer” shall include a  
13 person required to pay the surcharge imposed by this part, which  
14 includes the seller, who shall be required to register with the board.  
15 The audit, refund, and appeal procedures of the Fee Collection  
16 Procedures Law (Part 30 (commencing with Section 55001)) shall  
17 apply to the collection and remittance of the prepaid MTS  
18 surcharge.

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

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

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

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

1 42021. The board shall establish remittance schedules and  
2 methods for the prepaid MTS surcharge that utilize existing  
3 methods established under the Sales and Use Tax Law (Part 1  
4 (commencing with Section 6001)), including all of the following:

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

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

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

15 42022. Every seller shall register with the board. The board  
16 shall establish a method for registration of sellers under this part  
17 that utilizes the existing registration process for a seller's permit  
18 established pursuant to Section 6066 of the Sales and Use Tax  
19 Law (Part 1 (commencing with Section 6001)). Every application  
20 for registration shall be made upon a form prescribed by the board  
21 and shall set forth the name under which the applicant transacts  
22 or intends to transact business, the location of its place or places  
23 of business, and such other information as the board may require.  
24 An application for registration shall be authenticated in a form or  
25 pursuant to methods as may be prescribed by the board.

26 42023. (a) The Prepaid Mobile Telephony Services Surcharge  
27 Fund is hereby created in the State Treasury. The Prepaid MTS  
28 911 Account and the Prepaid MTS PUC Account are hereby  
29 created in the fund. The Prepaid Mobile Telephony Services  
30 Surcharge Fund shall consist of all surcharges, interest, penalties,  
31 and other amounts collected and paid to the board pursuant to this  
32 part, less a deduction in an amount not to exceed 2 percent of the  
33 collected amounts to refund and reimburse the board for expenses  
34 incurred in the administration and collection of the prepaid MTS  
35 surcharge.

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

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

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

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

14 (d) The Local Charge for Prepaid Mobile Telephony Services  
15 Fund is hereby created in the State Treasury. The Utility User Tax  
16 Account and the Local 911 Charges Account are hereby created  
17 in the fund.

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

20

21 PART 21.1. LOCAL PREPAID MOBILE TELEPHONY  
22 SERVICES COLLECTION ACT

23

24 42100. (a) This part shall be known and may be cited as the  
25 Local Prepaid Mobile Telephony Services Collection Act.

26 (b) It is a matter of statewide concern that the local charges for  
27 local prepaid mobile telephony services be collected in a uniform  
28 manner in order for the collection to be fair and uniform on a  
29 statewide basis.

30 42101. For purposes of this part, all of the following definitions  
31 shall apply:

32 (a) "Local charge" means the utility user taxes as described in  
33 Section 42102, and charges for access to communication services  
34 or to local "911" emergency telephone systems, as described in  
35 Section 42102.5.

36 (b) "Prepaid mobile telephony services" has the same meaning  
37 as that term is defined in the Prepaid Mobile Telephony Services  
38 Surcharge and Collection Act (Part 21 (commencing with Section  
39 42000)).

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

8 42102. (a) Notwithstanding any other law, on and after January  
9 1, 2015, and before \_\_\_\_\_, the authority of a city, county, or city  
10 and county, which includes a charter city, county, or city and  
11 county, to impose a utility user tax rate on the consumption of  
12 prepaid mobile telephony service in the city, county, or city and  
13 county at the rate as specified in an ordinance authorized pursuant  
14 to Section 7284.2 or any other law is suspended, and the utility  
15 user tax rate to be applied instead during the period under any  
16 ordinance as so adopted is the applicable of the following:

17 (1) In the case of a city, county, or city and county that has  
18 adopted an ordinance to impose a utility user tax on the  
19 consumption of prepaid communication services in the city, county,  
20 or city and county at the rate of less than 1.5 percent, the rate shall  
21 be 0 percent.

22 (2) In the case of a city, county, or city and county that has  
23 adopted an ordinance to impose a utility user tax on the  
24 consumption of prepaid communication services in the city, county,  
25 or city and county at the rate of 1.5 percent or more but less than  
26 2.5 percent, the rate shall be 1.5 percent.

27 (3) In the case of a city, county, or city and county that has  
28 adopted an ordinance to impose a utility user tax on the  
29 consumption of prepaid communication services in the city, county,  
30 or city and county at the rate of 2.5 percent or more but less than  
31 3.5 percent, the rate shall be 2.5 percent.

32 (4) In the case of a city, county, or city and county that has  
33 adopted an ordinance to impose a utility user tax on the  
34 consumption of prepaid communication services in the city, county,  
35 or city and county at the rate of 3.5 percent or more but less than  
36 4.5 percent, the rate shall be 3.5 percent.

37 (5) In the case of a city, county, or city and county that has  
38 adopted an ordinance to impose a utility user tax on the  
39 consumption of prepaid communication services in the city, county,

1 or city and county at the rate of 4.5 percent or more but less than  
2 5.5 percent, the rate shall be 4.5 percent.

3 (6) In the case of a city, county, or city and county that has  
4 adopted an ordinance to impose a utility user tax on the  
5 consumption of prepaid communication services in the city, county,  
6 or city and county at the rate of 5.5 percent or more but less than  
7 6.5 percent, the rate shall be 5.5 percent.

8 (7) In the case of a city, county, or city and county that has  
9 adopted an ordinance to impose a utility user tax on the  
10 consumption of prepaid communication services in the city, county,  
11 or city and county at the rate of 6.5 percent or more but less than  
12 7.5 percent, the rate shall be 6.5 percent.

13 (8) In the case of a city, county, or city and county that has  
14 adopted an ordinance to impose a utility user tax on the  
15 consumption of prepaid communication services in the city, county,  
16 or city and county at the rate of 7.5 percent or more but less than  
17 9 percent, the rate shall be 7.5 percent.

18 (9) In the case of a city, county, or city and county that has  
19 adopted an ordinance to impose a utility user tax on the  
20 consumption of prepaid communication services in the city, county,  
21 or city and county at the rate of 9 percent or more, the rate shall  
22 be 9 percent.

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

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

38 (d) On and after January 1, 2015, and before \_\_\_\_, this part  
39 shall be all of the following:

40 (1) The exclusive method for both of the following:

1 (A) Collecting the local utility user taxes, local 911 charges,  
 2 and any other local charges imposed on customers using prepaid  
 3 communication services.

4 (B) Defining the scope of the tax or charge.

5 (2) The substitution for the utility user tax rate set out in the  
 6 local ordinance with the applicable tiered rate as established by  
 7 the Legislature. This part shall not preempt, limit, or affect the  
 8 general authority of local jurisdictions to impose a utility user tax,  
 9 local 911 charge, or any other local charges.

10 42102.5. (a) Notwithstanding any other law, on and after  
 11 January 1, 2015, and before \_\_\_\_\_, the authority of a city, county,  
 12 or city and county, which includes a charter city, county, or city  
 13 and county, to impose a charge, that applies to prepaid mobile  
 14 telephony service, for access to communication services or access  
 15 to local “911” emergency telephone systems in the city, county,  
 16 or city and county at the rate as specified in an ordinance is  
 17 suspended, and the rate to be applied instead during that period  
 18 under any ordinance as so adopted is the applicable of the  
 19 following:

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

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

37 (b) Subdivision (a) is a self-executing provision that operates  
 38 without regard to any decision or act on the part of any city, county,  
 39 or city and county. A change in an access charge rate resulting  
 40 from either the suspension of, or the termination of the suspension

1 of, a charge adopted by a city, county, or city and county set forth  
2 in subdivision (a) is not subject to voter approval under either  
3 statute or Article XIII C of the California Constitution.

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

13 42103. (a) The board shall perform all functions incident to  
14 the administration and collection of the local charges of a city,  
15 county, or a city and county, and shall collect and administer the  
16 local charges in the manner as prescribed for the collection and  
17 administration of the prepaid MTS surcharge in the Prepaid Mobile  
18 Telephony Services Surcharge and Collection Act (Part 21  
19 (commencing with Section 42000)), subject to the limitations set  
20 forth in subdivisions (d) ~~and~~, (e), and (f).

21 (b) All local charges collected by the board shall be deposited  
22 in the Local Charges for Prepaid Mobile Telephony Services Fund  
23 created by subdivision (d) of Section 42023, and shall be held in  
24 trust for the local taxing jurisdiction, and shall not be used for any  
25 other purpose. Local charges shall consist of all taxes, charges,  
26 interest, penalties, and other amounts collected and paid to the  
27 board, less a deduction in an amount not to exceed 2 percent of  
28 the collected amounts to refund and reimburse the board for  
29 expenses incurred in the administration and collection of the local  
30 charges. The board shall transmit the funds to the local jurisdictions  
31 periodically as promptly as feasible. The transmittals required  
32 under this section shall be made at least once in each calendar  
33 quarter. The board shall furnish a quarterly statement indicating  
34 the amounts paid and withheld.

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

38 (d) *The board’s audit duties under this part shall be limited to*  
39 *verification that the seller complied with paragraphs (2) and (3)*  
40 *of subdivision (c) of Section 42014.*

1     ~~(d)~~

2     (e) The board may contract with a third party, pursuant to  
3 Section 55303, but for purposes of this part, solely in connection  
4 with the following board duties:

5     (1) To allocate and transmit collected local charges in the  
6 Prepaid Mobile Telephony Services Surcharge Fund pursuant to  
7 subdivision (b) to the appropriate local jurisdictions.

8     ~~(2) To verify the applicability of the local ordinance to prepaid  
9 mobile telephony services and the applicable tiered rate.~~

10    ~~(3)~~

11    (2) To audit proper collection and remittance of the local charge,  
12 including correct geocoding of a seller with a physical location in  
13 a local jurisdiction pursuant to subdivision (d).

14    ~~(4) To handle claims for refund, including claims of exemption  
15 under the local ordinance.~~

16    ~~(5)~~

17    (3) To respond to requests from sellers, customers, boards, and  
18 others regarding *issues pertaining to* local charges *that are within*  
19 *the scope of the board's duties.*

20    (e)

21    (f) For purposes of this part, any third-party contract under  
22 subdivision-~~(d)~~ (e) shall be subject to the following limitations:

23    (1) Any third party shall, to the same extent as the board, be  
24 subject to subdivision (b) of Section 55381, relating to unlawful  
25 disclosures.

26    (2) No third-party contract shall provide, in whole or in part, in  
27 any manner a contingent fee arrangement as payment for services  
28 rendered. For purposes of this section, "contingent fee" includes,  
29 but is not limited to, a fee that is based on a percentage of the tax  
30 liability reported on a return, a fee that is based on a percentage  
31 of the taxes owed, or a fee that depends on the specific tax result  
32 attained.

33    (3) The board shall not perform or contract with any third party  
34 to perform any duty under subdivision-~~(d)~~ (e) if the same duty has  
35 previously been or is currently being performed by the board  
36 individually or pursuant to another third-party contract for the  
37 same ordinance, tiered rate, audit, refund claim, or local charge  
38 request in the same tax period.

1 42105. (a) The city, county, or city and county that has adopted  
2 an ordinance to impose a charge that applies to prepaid mobile  
3 telephony service shall be solely responsible for:

4 (1) Defending any claim regarding the validity of the ordinance  
5 in its application to prepaid mobile telephony service.

6 (2) Interpreting any provision of the ordinance, except to the  
7 extent specifically superseded by this statute.

8 (3) Responding to claims for refund, including claims of  
9 exemption under the ordinance.

10 (b) A consumer may rebut the presumed location of the retail  
11 transaction, as provided in subdivision (b) of Section 42014, by  
12 filing a claim and declaration under penalty of perjury on a form  
13 established by the city or county clerk of the local jurisdiction  
14 indicating the actual location of the retail sale. The claim shall be  
15 processed in accordance with the provisions of the local ordinance  
16 that allows the claim to be filed. A customer that is exempt from  
17 the local charge under the local ordinance may file a claim for a  
18 refund from the local jurisdiction in accordance with the refund  
19 provisions of the local ordinance.

20 (c) In connection with any actions or claims relating to or arising  
21 from the invalidity of a local tax ordinance, in whole or in part,  
22 the seller shall not be liable to any customer as a consequence of  
23 collecting the tax. In the event a local jurisdiction is ordered to  
24 refund the tax, it shall be the sole responsibility of the local  
25 jurisdiction to refund the tax. In any action seeking to enjoin  
26 collection of a local charge by seller, in any action seeking  
27 declaratory relief concerning a local charge, in any action seeking  
28 a refund of a local charge, or in any action seeking to otherwise  
29 invalidate a local charge, the sole necessary party defendant in the  
30 action shall be the local jurisdiction on whose behalf the local  
31 charge is collected, and the seller collecting the local charge shall  
32 not be named as a party in the action.

33 42106. (a) For purposes of this section:

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

37 (2) “Refund” means the amount of local charges deducted by  
38 the board from a city’s, county’s, or city and county’s quarterly  
39 local charges in order to pay the city’s, county’s, or city and  
40 county’s share of a local charge refund due to one taxpayer.

1 (3) “Offset portion” means that portion of the refund which  
2 exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent  
3 of the city’s, county’s, or city and county’s quarterly local charges.

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

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

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

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

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

26 42107. The city, county, or city and county shall pay to the  
27 board its costs of preparation to administer the collection of local  
28 charges. The city, county, or city and county shall pay such costs  
29 monthly as incurred and billed by the board. The costs include all  
30 preparatory costs, including costs of developing procedures,  
31 programming for data processing, developing and adopting  
32 appropriate regulations, designing and printing of forms,  
33 developing instructions for the board’s staff and for taxpayers, and  
34 other necessary preparatory costs which shall include the board’s  
35 direct and indirect costs as specified by Section 11256 of the  
36 Government Code. Any disputes as to the amount of preparatory  
37 costs incurred shall be resolved by the Director of Finance, and  
38 his or her decision shall be final. The maximum amount of all  
39 preparatory costs to be paid by the city, county, or city and county  
40 shall not, in any event, exceed \_\_\_\_ thousand dollars (\$\_\_\_\_\_).

1 42108. (a) There shall be no recovery from the state for the  
2 imposition of any unconstitutional or otherwise invalid local charge  
3 that is collected pursuant to this part.

4 (b) If a final and nonappealable decision of a court of competent  
5 jurisdiction determines that a local charge is unconstitutional or  
6 otherwise invalid, the city, the county, or the city and county, as  
7 the case may be, shall transfer to the board the revenues derived  
8 from the unconstitutional or invalid local charge necessary to  
9 reimburse claimants for the unconstitutional or invalid local charge  
10 paid, including interest allowed under Section 6907. The board  
11 shall deposit these revenues in a segregated impound account in  
12 the Prepaid Mobile Telephony Services Surcharge Fund, and shall  
13 administer any refunds necessitated in accordance with the Fee  
14 Collection Procedures Law (Part 30 (commencing with Section  
15 55001)).

16 42109. The board shall annually prepare a report showing the  
17 amount of both reimbursed and unreimbursed costs incurred by it  
18 in administering the collection of local charges pursuant to this  
19 part.

20 SEC. 8. No inference shall be drawn from the enactment of  
21 this act with respect to any remittance requirements of a prepaid  
22 MTS provider pursuant to the law as it existed prior to the  
23 enactment of this act. *Additionally, nothing in this act shall affect*  
24 *any remittance requirements of a prepaid MTS provider for any*  
25 *service other than prepaid mobile telephony services. Nothing in*  
26 *this act shall affect the federal remittance requirements of a*  
27 *prepaid MTS provider.*

28 SEC. 9. It is the intent of the Legislature that the remittance  
29 obligations of a prepaid MTS provider shall continue to remain  
30 subject to the law existing prior to the effective date of this act  
31 until, pursuant to this act, those obligations are changed as of  
32 January 1, 2015.

33 SEC. 10. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 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. 11. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

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

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