

AMENDED IN SENATE JUNE 25, 2013

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

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, 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

1 broadband service offering connectivity over a radio band licensed
2 by the Federal Communications Commission. Unless specified to
3 the contrary, “mobile data service” does not include nonvoice
4 information communicated through a wireless local area network
5 operating in the unlicensed radio bands, commonly known as a
6 “Wi-Fi” network.

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

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

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

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

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

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

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

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

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

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

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

1 (d) The commission shall have enforcement authority to ensure
2 the proper remittances over retail transactions, pursuant to the
3 Prepaid Mobile Telephony Services Surcharge and Collection Act
4 (Part 21 (commencing with Section 42000) of Division 2 of the
5 Revenue and Taxation Code), where the prepaid mobile telephony
6 services (Prepaid MTS) provider is also the seller. *The commission*
7 *shall collaborate with the State Board of Equalization in exercising*
8 *its enforcement authority pursuant to this subdivision.*

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

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

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

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

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

33 41020. (a) A surcharge is hereby imposed on amounts paid
34 by every person in the state for both of the following:

35 (1) Intrastate telephone communication service in this state. The
36 surcharge shall be applied to prepaid mobile telecommunications
37 services pursuant to the Prepaid Mobile Telephony Services
38 Surcharge and Collection Act (Part 21 (commencing with Section
39 42000)), and the calculation of the intrastate portion of charges

1 for prepaid mobile telecommunications services shall be made
2 pursuant to paragraph (1) of subdivision (b) of Section 42010.

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

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

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

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

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

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

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

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

14 (c) The surcharge imposed shall be at the rate of one-half of 1
15 percent of the charges made for such services to and including
16 November 1, 1982, and thereafter at a rate fixed pursuant to Article
17 2 (commencing with Section 41030).

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

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

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

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

35 (f) For purposes of this section:

36 (1) "Charges for mobile telecommunications services" means
37 any charge for, or associated with, the provision of commercial
38 mobile radio service, as defined in Section 20.3 of Title 47 of the
39 Code of Federal Regulations, as in effect on June 1, 1999, or any
40 charge for, or associated with, a service provided as an adjunct to

1 a commercial mobile radio service, that is billed to the customer
2 by or for the customer's home service provider, regardless of
3 whether individual transmissions originate or terminate within the
4 licensed service area of the home service provider.

5 (2) "Customer" means (A) the person or entity that contracts
6 with the home service provider for mobile telecommunications
7 services, or with a VoIP service provider for VoIP service, or (B)
8 if the end user of mobile telecommunications services or VoIP
9 service is not the contracting party, the end user of the mobile
10 telecommunications service or VoIP service. This paragraph applies
11 only for the purpose of determining the place of primary use. The
12 term "customer" does not include (A) a reseller of mobile
13 telecommunications service or VoIP communication service, or
14 (B) a serving carrier under an arrangement to serve the mobile
15 customer outside the home service provider's licensed service
16 area.

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

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

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

26 (6) "Place of primary use" means the street address
27 representative of where the customer's use of the mobile
28 telecommunications service or VoIP service primarily occurs, that
29 must be:

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

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

34 (7) (A) "Reseller" means a provider who purchases
35 telecommunications services or VoIP service from another
36 telecommunications service provider or VoIP service and then
37 resells the services, or uses the services as a component part of,
38 or integrates the purchased services into, a mobile
39 telecommunications service or VoIP service.

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

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

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

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

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

19 41030. (a) The Department of Technology shall determine
20 annually, on or before October 1, to be effective on January 1 of
21 the following year, a surcharge pursuant to subdivision (b) that it
22 estimates will produce sufficient revenue to fund the current fiscal
23 year’s 911 costs.

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

1 contribution purposes, consistent with ~~the methodology to be used~~
2 ~~by the board to calculate the prepaid MTS surcharge pursuant to~~
3 paragraph (1) of subdivision (b) of Section 42010.

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

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

12
13 PART 21. PREPAID MOBILE TELEPHONY SERVICES
14 SURCHARGE ~~AND~~ COLLECTION ACT

15
16 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

17
18 42000. This part shall be known, and may be cited, as the
19 Prepaid Mobile Telephony Services Surcharge ~~and~~ Collection Act.

20 42002. The Legislature finds and declares all of the following:

21 (a) Maintaining effective and efficient communications services,
22 911 emergency systems, communications-related public policy
23 programs to promote universal service, and various local programs
24 across the state benefits all persons with access to the
25 telecommunications system.

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

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

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

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

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

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

16 42004. For purposes of this part, the following terms have the
17 following meanings:

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

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

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

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

28 (e) “Local jurisdiction” ~~means~~ or “local agency” means a city,
29 county, or city and county, which includes a charter city, county,
30 or city and county.

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

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

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

3 (i) “Prepaid mobile telephony services” means the right to utilize
4 a mobile device authorized by the Federal Communications
5 Commission for mobile telecommunications services or
6 information services, including the download of digital products
7 delivered electronically, content, and ancillary services, or both
8 telecommunications services and information services, that must
9 be purchased in advance of usage in predetermined units or dollars;
10 ~~with the right of usage declining in a known amount.~~ For these
11 purposes, “telecommunications service” and “information service”
12 have the same meanings as defined in Section 153 of Title 47 of
13 the United States Code.

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

17 (k) “Prepaid MTS surcharge” means ~~a unitary~~ *the* surcharge
18 that consists of the emergency telephone users surcharge and the
19 Public Utilities Commission surcharges, as calculated pursuant to
20 subdivision (b) of Section 42010, *that is required to be collected*
21 *by a seller from a prepaid consumer.*

22 (l) “Public Utilities Commission surcharges” means surcharges
23 authorized by the Public Utilities Commission to be billed and
24 collected from end-use consumers of wireless communications
25 services, and of which the commission provides the board with
26 notice pursuant to Section 316 of the Public Utilities Code,
27 including:

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

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

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

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

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

1 (6) The Moore Universal Telephone Service Act (Article 8
2 (commencing with Section 871) of Chapter 4 of Part 1 of Division
3 1 of the Public Utilities Code).

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

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

13 (n) “Seller” means a person that sells prepaid mobile telephony
14 service to a ~~prepaid consumer~~ *person in a retail transaction*.

15
16 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES
17 SURCHARGE
18

19 42010. (a) (1) On and after January 1, 2015, a prepaid MTS
20 surcharge shall be imposed on each prepaid consumer and shall
21 be collected by a seller from each prepaid consumer at the time of
22 each retail transaction ~~for prepaid mobile telephony services~~ in
23 this state. The prepaid MTS surcharge shall be ~~collected~~ *imposed*
24 as a percentage of the ~~amount of each sales price of each~~ retail
25 transaction that occurs in this state.

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

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

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

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

8 (c) (1) The board shall post, for each local jurisdiction, the
9 combined total of the rates of prepaid MTS surcharge and the rate
10 or rates of local charges, as calculated pursuant to Section 42012,
11 that each local jurisdiction has adopted, not later than December
12 1 of each year, on its Internet Web site. The posted combined rate
13 shall be the rate that applies to all retail transactions during the
14 calendar year beginning January 1 following the posting.

15 (2) Notwithstanding paragraph (1), if a local agency notifies
16 the board pursuant to subdivision (b) of Section 42012 that *the*
17 *posted rate is inaccurate* or it no longer imposes a local charge or
18 local charges or that the rate of its local charge or local charges
19 has decreased since the previous October 1 calculation, the board
20 shall promptly post a recalculated rate that is applicable to the
21 jurisdiction of that local agency. The seller shall not be required
22 to implement the changes any earlier than 60 days from the date
23 on which the board posts the new rate and provides written
24 notification to the seller. If the 60th day is not the first day of a
25 month, then the seller shall implement the changes on the first day
26 of the month following the month in which the 60th day occurs.
27 Nothing in this section modifies the notice obligations of Section
28 799 of the Public Utilities Code. *However, beginning January 1,*
29 *2015, the notification and implementation requirements of*
30 *paragraphs (5) and (6) of subdivision (a) of Section 799 shall not*
31 *apply to prepaid mobile telephony services.*

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

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

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

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

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

17 (h) A seller that has collected any amount of prepaid MTS
18 surcharge and local charges in excess of the amount of the
19 surcharge imposed by this part and actually due from a prepaid
20 consumer may refund that amount to the prepaid consumer, even
21 though the surcharge amount has already been paid over to the
22 board and no corresponding credit or refund has yet been secured.
23 Any seller making a refund of any charge to a prepaid consumer
24 may repay therewith the amount of the surcharge paid. The seller
25 may claim credit for that overpayment against the amount of
26 surcharge imposed by this part that is due upon any other quarterly
27 return, provided the credit is claimed in a return dated no later than
28 three years from the date of overpayment.

29 (i) (1) Every prepaid consumer of mobile telephony services
30 in this state is liable for the prepaid MTS surcharge and any local
31 charges until they have been paid to this state, except that payment
32 to a seller registered under this part relieves the prepaid consumer
33 from further liability for the surcharge and local charges. Any
34 surcharge collected from a prepaid consumer that has not been
35 remitted to the board shall be a debt owed to the state by the person
36 required to collect and remit the surcharge. Any local charge
37 collected from a prepaid consumer that has not been remitted to
38 the board shall be a debt owed jointly to the state and to the local
39 jurisdiction imposing the local charge by the person required to
40 collect and remit the local charge. Nothing in this part shall impose

1 any obligation upon a seller to take any legal action to enforce the
 2 collection of the surcharge or local charge imposed by this section.

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

12 42012. (a) A local agency that has enacted a local charge that
 13 is applicable to prepaid mobile telephony service, or in the future
 14 enacts a new or increased local charge, shall ~~provide~~ *enter into a*
 15 *contract with the board for the board to perform the functions set*
 16 *forth in Section 42103 and that requires the local agency to provide*
 17 *the board with written notice of the amount of the local 911 charge,*
 18 *as set out in Section 42102.5, or the applicable tiered rate for a*
 19 *utility user tax, as set out in Section 42102, on or before* ~~December~~
 20 *September 1, commencing* ~~December~~ *September 1, 2014, and for*
 21 *each year thereafter, and that amount or rate shall be implemented*
 22 *by the sellers by no later than April 1 of the subsequent year.*

23 (b) For each ~~notice contract~~ required in subdivision (a), the
 24 local agency shall provide a certification *to the board* that its
 25 ordinance applies *its local charge* to prepaid mobile telephony
 26 services and that ~~it~~ *the local agency* agrees to indemnify, and hold
 27 and save harmless, the board, its officers, agents, and employees
 28 for any and all liability for damages that may result from collection
 29 pursuant to the ~~notice contract~~ required in subdivision (a).

30 (c) A local agency that has enacted local charges shall
 31 immediately notify the board of any reduction or elimination of
 32 charges that are applicable to prepaid mobile telephony services
 33 *pursuant to Section 42010.*

34 42014. (a) For purposes of this part, a retail transaction occurs
 35 in the state under any of the following circumstances:

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

38 (2) If paragraph (1) is not applicable, the prepaid consumer's
 39 address is in the state (known-address transaction). A

1 known-address transaction occurs in the state under any of the
2 following circumstances:

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

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

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

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

16 (b) (1) A retail transaction shall occur at only one location for
17 purposes of determining local charges. If the retail transaction is
18 a point-of-sale transaction, the consumption of, use of, or access
19 to, the prepaid mobile telephony service shall be presumed to be
20 at that location. ~~If~~

21 (2) *If* the retail transaction is a known-address transaction, the
22 location shall be as determined in descending order beginning with
23 subparagraph (A) of paragraph (2) of subdivision (a), if
24 subparagraph (A) of that paragraph is inapplicable, then pursuant
25 to subparagraph (B) of that paragraph, if both subparagraphs (A)
26 and (B) of that paragraph are inapplicable, then subparagraph (C)
27 of that paragraph, and if subparagraphs (A), (B), and (C) of that
28 paragraph are inapplicable, then subparagraph (D) of that
29 paragraph. *In a known-address transaction, the consumption of,*
30 *use of, or access to, the prepaid mobile telephony service shall be*
31 *presumed to be at the known-address.*

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

35 ~~(2)~~

36 (c) (1) A seller that relies in good faith on *geographical*
37 ~~information provided by the board~~ to match the location of a
38 point-of-sale transaction to the applicable prepaid MTS surcharge
39 amount and local charges, collects that amount from the prepaid
40 consumer, and remits the amount to the board in compliance with

1 this part, shall not be liable for any additional MTS surcharge or
 2 local charges and shall not be required to refund any amounts
 3 collected and paid to the board to the prepaid consumer.

4 (3)

5 (2) For a known-address transaction, the seller may collect the
 6 prepaid MTS surcharge and local charges that ~~corresponds~~
 7 *correspond* to the five digit postal ZIP Code of the prepaid
 8 consumer’s address. A seller that relies in good faith on information
 9 provided by the board to match the five digit postal ZIP Code of
 10 the prepaid consumer’s address to the applicable prepaid MTS
 11 surcharge and local charges amount, collects that amount from the
 12 prepaid consumer, and remits the amount to the board in
 13 compliance with this part, shall not be liable for any additional
 14 MTS surcharge or local charges and shall not be required to refund
 15 any amounts ~~collected and paid to the board to the prepaid~~
 16 ~~consumer. If the five digit postal ZIP Code of the prepaid~~
 17 ~~consumer’s address corresponds to more than one local charge~~
 18 ~~and the amount collected and remitted to the board corresponds~~
 19 ~~to one of the local charges that is applicable to that ZIP Code, the~~
 20 ~~seller shall not be liable for any additional local charges and shall~~
 21 ~~not be required to refund any local charges collected and paid to~~
 22 ~~the board to the prepaid consumer, even if the five digit postal ZIP~~
 23 ~~Code of the prepaid consumer’s address that the seller uses~~
 24 ~~corresponds to more than one local charge.~~

25 (4) ~~A local agency may request the board to correct an error in~~
 26 ~~the geocoding of a seller with a physical location within that local~~
 27 ~~agency by submitting in writing a declaration of the correction,~~
 28 ~~which is also signed by the local agency that is improperly~~
 29 ~~receiving the local charge due to the error. Any correction request~~
 30 ~~must be submitted on or before December 1, commencing~~
 31 ~~December 1, 2014, and for each year thereafter, any correction~~
 32 ~~shall be implemented by the sellers no later than April 1 of the~~
 33 ~~subsequent year. For past errors in excess of _____, the board shall~~
 34 ~~make appropriate adjustments to the future payments of the two~~
 35 ~~affected local agencies to account for those errors. For purposes~~
 36 ~~of this paragraph, “geocoding” means matching a postal ZIP code~~
 37 ~~of a prepaid customer’s address to the applicable prepaid MTS~~
 38 ~~surcharge and local charges.~~

39 42016. The prepaid MTS surcharge and local charges are
 40 imposed on the prepaid consumer of mobile telephony services

1 and not on the seller or on any prepaid MTS provider, except that
2 the seller shall *collect and* remit all ~~collected of the~~ prepaid MTS
3 surcharges and local charges pursuant to this part and Part 21.1
4 (commencing with Section 42100).

5 42018. (a) If prepaid mobile telephony services are sold with
6 ~~one or more other products~~ a mobile telephony service
7 communication device, commonly termed a cellular telephone, for
8 a single, nonitemized price, then the prepaid MTS surcharge and
9 local charges shall apply to the entire nonitemized price unless the
10 seller elects to apply the surcharge and local charges to either of
11 the following:

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

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

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

31
32
33

CHAPTER 3. ADMINISTRATION

34 42020. (a) (1) The board shall administer *and collect* the
35 prepaid MTS surcharge imposed by this part pursuant to the Fee
36 Collection Procedures Law (Part 30 (commencing with Section
37 55001)). For purposes of this part, the references in the Fee
38 Collection Procedures Law to “fee” shall include the prepaid MTS
39 surcharge imposed by this part, and references to “feepayer” shall
40 include a person required to pay the surcharge imposed by this

1 part, which includes the seller, who shall be required to register
 2 with the board. ~~The audit, refund, and appeal procedures of the~~
 3 ~~Fee Collection Procedures Law (Part 30 (commencing with Section~~
 4 ~~55001)) shall apply to the collection and remittance of the prepaid~~
 5 ~~MTS surcharge.~~

6 (2) *Notwithstanding Article 1.1 (commencing with Section*
 7 *55050) of Chapter 3 of Division 2 of the Revenue and Taxation*
 8 *Code, any person required, or that elects, to remit amounts due*
 9 *under Part 1 (commencing with Section 6001) of Division 2 of the*
 10 *Revenue and Taxation Code by electronic funds transfer pursuant*
 11 *to Article 1.2 (commencing with Section 6479.3) shall remit*
 12 *assessment amounts due under this section by electronic funds*
 13 *transfer.*

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

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

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

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

35 42021. The board shall establish remittance schedules and
 36 methods for the prepaid MTS surcharge that utilize existing
 37 methods established under the Sales and Use Tax Law (Part 1
 38 (commencing with Section 6001)), including all of the following:

39 (a) The prepaid MTS surcharge, minus the amount retained by
 40 the seller pursuant to subdivision (e) of Section 42010, is due and

1 payable to the board quarterly on or before the last day of the
2 month next succeeding each quarterly period.

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

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

9 42022. Every seller shall register with the board. The board
10 shall establish a method for registration of sellers under this part
11 that utilizes the existing registration process for a seller's permit
12 established pursuant to Section 6066 of the Sales and Use Tax
13 Law (Part 1 (commencing with Section 6001)). Every application
14 for registration shall be made upon a form prescribed by the board
15 and shall set forth the name under which the applicant transacts
16 or intends to transact business, the location of its place or places
17 of business, and such other information as the board may require.
18 An application for registration shall be authenticated in a form or
19 pursuant to methods as may be prescribed by the board.

20 42023. (a) The Prepaid Mobile Telephony Services Surcharge
21 Fund is hereby created in the State Treasury. The Prepaid MTS
22 911 Account and the Prepaid MTS PUC Account are hereby
23 created in the fund. The Prepaid Mobile Telephony Services
24 Surcharge Fund shall consist of all surcharges, interest, penalties,
25 and other amounts collected and paid to the board pursuant to this
26 part, less a deduction in an amount not to exceed 2 percent of the
27 collected amounts to refund and reimburse the board for expenses
28 incurred in the administration and collection of the prepaid MTS
29 surcharge.

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

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

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

39 (c) Moneys in the Prepaid MTS 911 Account and the Prepaid
40 MTS PUC Account may be appropriated by the Legislature only

1 for the purposes for which the moneys were collected. All moneys
 2 collected pursuant to this part shall be allocated only to the entities
 3 specified in this section and shall not be used for any other purpose,
 4 including, but not limited to, loans, transfers, or uses for any other
 5 purpose, funds, or account.

6 ~~(d) The Local Charge for Prepaid Mobile Telephony Services~~
 7 ~~Fund is hereby created in the State Treasury. The Utility User Tax~~
 8 ~~Account and the Local 911 Charges Account are hereby created~~
 9 ~~in the fund.~~

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

12

13 PART 21.1. LOCAL PREPAID MOBILE TELEPHONY
 14 SERVICES COLLECTION ACT

15

16 42100. (a) This part shall be known and may be cited as the
 17 Local Prepaid Mobile Telephony Services Collection Act.

18 (b) *The Legislature finds and declares all of the following:*

19 (1) *Maintaining effective and efficient communications services,*
 20 *911 emergency systems, communications-related public policy*
 21 *programs to promote universal service, and various local programs*
 22 *across the state benefit all persons with access to the*
 23 *telecommunications system.*

24 (2) *Providers of end-use communications services, including*
 25 *providers of mobile voice telecommunications services, which the*
 26 *Federal Communications Commission terms mobile telephony*
 27 *service, are required to collect and remit utility users taxes and*
 28 *local 911 or access charges (local charges) imposed by over 150*
 29 *cities and counties in California on end-users of such mobile*
 30 *telephony services, as required by existing state or local law.*

31 (3) *Local charges on telecommunication services represent an*
 32 *important source of tax revenue for many cities and counties, and*
 33 *are used to pay for such essential governmental services as public*
 34 *safety, streets, parks, libraries, senior centers, and many more.*

35 (4) *Prepaid mobile telephony services are an important and*
 36 *growing segment of the communications industry. Prepaid mobile*
 37 *telephony services, unlike postpaid mobile telephony services, are*
 38 *frequently sold by a third-party retailer that is not the provider of*
 39 *mobile telephony services, and collecting local charges from*
 40 *prepaid consumers of mobile telephony services at the time of the*

1 *retail transaction is necessary and the most efficient and*
2 *competitively neutral means for the collection of those local*
3 *charges.*

4 *(5) The collection of prepaid mobile telephony services by*
5 *third-party retailers and the remittance of those local charges to*
6 *the board involves administrative costs and responsibilities that*
7 *are unique to prepaid mobile telephony services, and therefore*
8 *justify unique reimbursement and tax rate simplification measures,*
9 *which are fair and reasonable.*

10 ~~(b)~~

11 *(c) It is a matter of statewide concern that the local charges for*
12 *local prepaid mobile telephony services be collected in a uniform*
13 *manner in order for the collection to be fair and uniform on a*
14 *statewide basis.*

15 *(d) It is the intention of the Legislature that this part shall*
16 *preempt the provisions pertaining to the rate and collection*
17 *methodology contained in all local ordinances, rules, or*
18 *regulations concerning the imposition of a local charge upon the*
19 *consumption of prepaid mobile telephony services.*

20 42101. For purposes of this part, all of the following definitions
21 shall apply:

22 (a) “Local charge” means the utility user taxes as described in
23 Section 42102, and charges for access to communication services
24 or to local “911” emergency telephone systems, as described in
25 Section 42102.5.

26 (b) “Prepaid mobile telephony services” has the same meaning
27 as that term is defined in the Prepaid Mobile Telephony Services
28 Surcharge and Collection Act (Part 21 (commencing with Section
29 42000)).

30 42101.5. On and after January 1, 2015, and before _____, a local
31 charge imposed on the consumption of prepaid mobile telephony
32 services shall be collected from the prepaid consumer at the same
33 time and in the same manner as the prepaid MTS surcharge is
34 collected under Part 21 (commencing with Section 42000), in lieu
35 of collection of those local charges by the city, county, or city and
36 county, including a charter city, county, or city and county.
37 *Through and including December 31, 2014, a prepaid MTS*
38 *provider may elect to remit the local charge based on the tax rate*
39 *of Section 42102 to the appropriate local taxing jurisdiction, and*
40 *those remittances shall be deemed to be in full compliance with*

1 *the local ordinance imposing a local charge on prepaid mobile*
 2 *telephony service.*

3 42102. (a) Notwithstanding any other law, on and after January
 4 1, 2015, and before _____, the authority of a city, county, or city
 5 and county, which includes a charter city, county, or city and
 6 county, to impose a utility user tax rate on the consumption of
 7 prepaid mobile telephony service in the city, county, or city and
 8 county at the rate as specified in an ordinance authorized pursuant
 9 to Section 7284.2 or any other law is suspended, and the utility
 10 user tax rate to be applied instead during the period under any
 11 ordinance as so adopted is the applicable of the following:

12 (1) In the case of a city, county, or city and county that has
 13 adopted an ordinance to impose a utility user tax on the
 14 consumption of prepaid communication services in the city, county,
 15 or city and county at the rate of less than 1.5 percent, the rate shall
 16 be 0 percent.

17 (2) 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 1.5 percent or more but less than
 21 2.5 percent, the rate shall be 1.5 percent.

22 (3) 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 2.5 percent or more but less than
 26 3.5 percent, the rate shall be 2.5 percent.

27 (4) 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 3.5 percent or more but less than
 31 4.5 percent, the rate shall be 3.5 percent.

32 (5) 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 4.5 percent or more but less than
 36 5.5 percent, the rate shall be 4.5 percent.

37 (6) 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 5.5 percent or more but less than
2 6.5 percent, the rate shall be 5.5 percent.

3 (7) 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 6.5 percent or more but less than
7 7.5 percent, the rate shall be 6.5 percent.

8 (8) 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 7.5 percent or more but less than
12 9 percent, the rate shall be 7.5 percent.

13 (9) 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 9 percent or more, the rate shall
17 be 9 percent.

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

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

33 (d) On and after January 1, 2015, and before ____, this part
34 shall be all of the following:

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

36 (A) Collecting the local utility user taxes, local 911 charges,
37 and any other local charges imposed on customers using prepaid
38 communication services.

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

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

6 42102.5. (a) Notwithstanding any other law, on and after
7 January 1, 2015, and before _____, the authority of a city, county,
8 or city and county, which includes a charter city, county, or city
9 and county, to impose a charge, that applies to prepaid mobile
10 telephony service, for access to communication services or access
11 to local “911” emergency telephone systems in the city, county,
12 or city and county at the rate as specified in an ordinance is
13 suspended, and the rate to be applied instead during that period
14 under any ordinance as so adopted is the applicable of the
15 following:

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

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

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

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

10 42103. (a) The board shall perform all functions incident to
11 the ~~administration and~~ collection of the local charges of a city,
12 county, or a city and county, and shall collect and administer the
13 local charges in the manner ~~as prescribed for the collection and~~
14 ~~administration~~ of the prepaid MTS surcharge in the Prepaid Mobile
15 Telephony Services Surcharge and Collection Act (Part 21
16 (commencing with Section 42000)), subject to the limitations set
17 forth in subdivisions (d), (e), and (f) *of this section, and subdivision*
18 *(a) of Section 42105.*

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

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

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

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

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

7 (2) To audit proper collection and remittance of the local charge
 8 pursuant to subdivision (d).

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

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

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

17 (2) No third-party contract shall provide, in whole or in part, in
 18 any manner a contingent fee arrangement as payment for services
 19 rendered. For purposes of this section, "contingent fee" includes,
 20 but is not limited to, a fee that is based on a percentage of the tax
 21 liability reported on a return, a fee that is based on a percentage
 22 of the taxes owed, or a fee that depends on the specific tax result
 23 attained.

24 (3) The board shall not perform or contract with any third party
 25 to perform any duty under subdivision (e) if the same duty has
 26 previously been or is currently being performed by the board
 27 individually or pursuant to another third-party contract for the
 28 same ordinance, tiered rate, audit, refund claim, or local charge
 29 request in the same tax period.

30 42105. (a) The city, county, or city and county that has adopted
 31 an ordinance to impose a charge that applies to prepaid mobile
 32 telephony service shall be solely responsible for:

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

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

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

39 (b) A consumer may rebut the presumed location of the retail
 40 transaction, as provided in subdivision (b) of Section 42014, by

1 filing a claim and declaration under penalty of perjury on a form
2 established by the city or county clerk of the local jurisdiction
3 indicating the actual location of the retail sale. The claim shall be
4 processed in accordance with the provisions of the local ordinance
5 that allows the claim to be filed. A customer that is exempt from
6 the local charge under the local ordinance may file a claim for a
7 refund from the local jurisdiction in accordance with the refund
8 provisions of the local ordinance.

9 (c) In connection with any actions or claims relating to or arising
10 from the invalidity of a local tax ordinance, in whole or in part,
11 the seller shall not be liable to any customer as a consequence of
12 collecting the tax. In the event a local jurisdiction is ordered to
13 refund the tax, it shall be the sole responsibility of the local
14 jurisdiction to refund the tax. In any action seeking to enjoin
15 collection of a local charge by a seller, in any action seeking
16 declaratory relief concerning a local charge, in any action seeking
17 a refund of a local charge, or in any action seeking to otherwise
18 invalidate a local charge, the sole necessary party defendant in the
19 action shall be the local jurisdiction on whose behalf the local
20 charge is collected, and the seller collecting the local charge shall
21 not be named as a party in the action.

22 42106. (a) For purposes of this section:

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

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

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

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

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

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

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

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

16 42107. The city, county, or city and county shall pay to the
17 board its costs of preparation to administer the collection of local
18 charges. The city, county, or city and county shall pay such costs
19 monthly as incurred and billed by the board. The costs include all
20 preparatory costs, including costs of developing procedures,
21 programming for data processing, developing and adopting
22 appropriate regulations, designing and printing of forms,
23 developing instructions for the board's staff and for taxpayers, and
24 other necessary preparatory costs which shall include the board's
25 direct and indirect costs as specified by Section 11256 of the
26 Government Code. Any disputes as to the amount of preparatory
27 costs incurred shall be resolved by the Director of Finance, and
28 his or her decision shall be final. The maximum amount of all
29 preparatory costs to be paid by the city, county, or city and county
30 shall not, in any event, exceed ____ thousand dollars (\$____).

31 42108. (a) There shall be no recovery from the state for the
32 imposition of any unconstitutional or otherwise invalid local charge
33 that is collected pursuant to this part.

34 (b) If a final and nonappealable decision of a court of competent
35 jurisdiction determines that a local charge is unconstitutional or
36 otherwise invalid, the city, the county, or the city and county, as
37 the case may be, shall transfer to the board the revenues derived
38 from the unconstitutional or invalid local charge necessary to
39 reimburse claimants for the unconstitutional or invalid local charge
40 paid, including interest allowed under Section 6907. The board

1 shall deposit these revenues in a segregated impound account in
2 the Prepaid Mobile Telephony Services Surcharge Fund, and shall
3 administer any refunds necessitated in accordance with the Fee
4 Collection Procedures Law (Part 30 (commencing with Section
5 55001)).

6 42109. The board shall annually prepare a report showing the
7 amount of both reimbursed and unreimbursed costs incurred by it
8 in administering the collection of local charges pursuant to this
9 part.

10 42110. *(a) Notwithstanding Section 55381, it is unlawful for*
11 *any person, other than an officer or employee of a county, city and*
12 *county, city, or district, who obtains access to information*
13 *contained in, or derived from, prepaid mobile telephony services*
14 *surcharge and local charge records of the board pursuant to*
15 *subdivision (b), to retain that information after that person's*
16 *contract with the county, city and county, city, or district has*
17 *expired.*

18 *(b) (1) When requested by resolution of the legislative body of*
19 *any county, city and county, city, or district, the board shall permit*
20 *any duly authorized officer or employee of the county, city and*
21 *county, city, or district, or other person designated by that*
22 *resolution, to examine all of the prepaid mobile telephony services*
23 *surcharge and local charge records of the board pertaining to the*
24 *ascertainment of those prepaid mobile telephony services*
25 *surcharge and local charges to be collected for the county, city*
26 *and county, city, or district by the board pursuant to contract*
27 *entered into between the board and the county, city and county,*
28 *city, or district pursuant to this part. Except as otherwise provided*
29 *in this section, this subdivision does not allow any officer,*
30 *employee, or other person authorized or designated by a county,*
31 *city and county, city, or district to examine any sales or*
32 *transactions and use tax records of any taxpayer. The costs that*
33 *are incurred by the board in complying with a request made*
34 *pursuant to this subdivision shall be deducted by the board from*
35 *those revenues collected by the board on behalf of the county, city*
36 *and county, city, or district making the request.*

37 *(2) The resolution of the legislative body of the county, city and*
38 *county, city, or district shall certify that any person designated by*
39 *the resolution, other than an officer or employee, meets all of the*
40 *following conditions:*

1 (A) *Has an existing contract with the county, city and county,*
 2 *city, or district to examine those prepaid mobile telephony services*
 3 *surcharge and local charge records.*

4 (B) *Is required by that contract to disclose information*
 5 *contained in, or derived from, those prepaid mobile telephony*
 6 *services surcharge and local charge records only to an officer or*
 7 *employee of the county, city and county, city, or district who is*
 8 *authorized by the resolution to examine the information.*

9 (C) *Is prohibited by that contract from performing consulting*
 10 *services for a retailer during the term of that contract.*

11 (D) *Is prohibited by that contract from retaining the information*
 12 *contained in, or derived from, those prepaid mobile telephony*
 13 *services surcharge and local charge records, after that contract*
 14 *has expired.*

15 (3) *Information obtained by examination of board records*
 16 *pursuant to this subdivision shall be used only for purposes related*
 17 *to the collection of the prepaid mobile telephony services surcharge*
 18 *and local charges by the board pursuant to the contract, or for*
 19 *purposes related to other governmental functions of the county,*
 20 *city and county, city, or district set forth in the resolution.*

21 (c) *If the board believes that any information obtained pursuant*
 22 *to subdivision (b) has been disclosed to any person not authorized*
 23 *or designated by the resolution of the legislative body of the county,*
 24 *city and county, city, or district, or has been used for purposes not*
 25 *permitted by subdivision (b), the board may impose conditions on*
 26 *access to its local charge records that the board considers*
 27 *reasonable, in order to protect the confidentiality of those records.*

28 (d) *Predecessors, successors, receivers, trustees, executors,*
 29 *administrators, assignees, and guarantors, if directly interested,*
 30 *may be given information as to the items included in the measure*
 31 *and amounts of any unpaid local charges or amounts of local*
 32 *charges required to be collected, interest, and penalties.*

33 SEC. 8. No inference shall be drawn from the enactment of
 34 this act with respect to any remittance requirements of a prepaid
 35 MTS provider pursuant to the law as it existed prior to the
 36 enactment of this act. Additionally, nothing in this act shall affect
 37 any remittance requirements of a prepaid MTS provider for any
 38 service other than prepaid mobile telephony services. Nothing in
 39 this act shall affect the federal remittance requirements of a prepaid
 40 MTS provider.

1 SEC. 9. It is the intent of the Legislature that the remittance
2 obligations of a prepaid MTS provider shall continue to remain
3 subject to the law existing prior to the effective date of this act
4 until, pursuant to this act, those obligations are changed as of
5 January 1, 2015. *However, the law existing prior to the effective*
6 *date of this act shall remain applicable for each of the following:*

7 (a) *The collection of surcharges, the liability for which accrued*
8 *prior to January 1, 2015.*

9 (b) *The making of any refunds and the effecting of any credits.*

10 (c) *The disposition of money collected.*

11 (d) *The commencement of any action or proceeding pursuant*
12 *to this part.*

13 SEC. 10. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SEC. 11. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

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