

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1717**

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**Introduced by Assembly Member Perea**

February 13, 2014

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An act to ~~amend, repeal, and add~~ *amend* Sections 224.4 and 431 of, and to add and ~~repeal~~ Section 319 of, *to*, the Public Utilities Code, and to amend ~~Section 41020 of, to amend, repeal, and add~~ *Sections 41020 and 41030 of, to add* Section 41020.5 *to*, and to add and ~~repeal~~ Part 21 (commencing with Section 42001) and Part 21.1 (commencing with Section 42100) of Division 2 of, *to*, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1717, 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 Office of Emergency Services, 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 has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. The commission is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state's telecommunications universal service programs and authorizes the commission to impose charges for the purpose of funding those programs. Pursuant to this authority, the commission has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge 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 commission to annually compute for prepaid mobile telephony services the commission's reimbursement fee and 6 universal service program surcharges, to post notice of those fees and surcharges on its Internet Web site, and to notify the State Board of Equalization and the Office of Emergency Services of the amounts and the computation method used to determine the amounts, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would require the commission, 30 days prior to adopting any adjustment to a reimbursement fee or universal service surcharge on both postpaid and prepaid intrastate service to prepare a prescribed resolution or other public document proposing the fee or surcharge adjustment and explaining the calculation of the new fee or surcharge, as specified, and would require the commission to make it available to the public and on the commission's Internet Web site.

The Moore Universal Telephone Service Act establishes the Universal Lifeline Telephone Service program in order to provide low-income households with access to affordable basic residential telephone service. Existing decisions of the commission exempt lifeline services from the commission's reimbursement fee and the 6 end-user surcharges that fund the state's 6 universal service programs.

This bill would exempt the purchase in a retail transaction in this state of prepaid mobile telephony services, either alone or in combination with mobile data or other services, by a consumer from the prepaid MTS surcharge and specified local charges if certain conditions are met, including that the prepaid consumer is certified as eligible for the state lifeline program or federal lifeline program.

The bill would require the Office of Emergency Services 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. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. 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 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~~, 2016, 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 Collection Act. In addition, the bill would, on or after January 1, ~~2015~~, 2016, 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 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 bill would repeal these provisions on January 1, 2019.~~

~~(4)~~

(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.

(5)

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

Vote: 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  
13 the contrary, "mobile data service" does not include nonvoice  
14 information communicated through a wireless local area network  
15 operating in the unlicensed radio bands, commonly known as a  
16 "Wi-Fi" network.

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

22 (c) "Mobile satellite telephone service" means voice  
23 communication to end users over a mobile satellite service  
24 involving the provision of commercial mobile radio service,

1 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal  
2 Regulations.

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

15 (e) ~~This section shall remain in effect only until January 1, 2019,~~  
16 ~~and as of that date is repealed, unless a later enacted statute, that~~  
17 ~~is enacted before January 1, 2019, deletes or extends that date.~~

18 SEC. 2. ~~Section 224.4 is added to the Public Utilities Code, to~~  
19 ~~read:~~

20 224.4. ~~(a) “Mobile data service” means the delivery of~~  
21 ~~nonvoice information to a mobile device and includes nonvoice~~  
22 ~~information communicated to a mobile telephony services handset,~~  
23 ~~nonvoice information communicated to handheld personal digital~~  
24 ~~assistant (PDA) devices and laptop computers, and mobile paging~~  
25 ~~service carriers offering services on pagers and two-way messaging~~  
26 ~~devices. Unless specified, “mobile data service” does not include~~  
27 ~~nonvoice information communicated through a wireless local area~~  
28 ~~network operating in the unlicensed radio bands, commonly known~~  
29 ~~as a “Wi-Fi” network.~~

30 (b) ~~“Mobile paging service” means the transmission of coded~~  
31 ~~radio signals for the purpose of activating specific small radio~~  
32 ~~receivers designed to be carried by a person and to give an aural,~~  
33 ~~visual, or tactile indication when activated.~~

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

39 (d) ~~“Mobile telephony service” means commercially available~~  
40 ~~interconnected mobile phone services that provide access to the~~

1 public switched telephone network (PSTN), or a successor network,  
2 via mobile communication devices employing radiowave  
3 technology to transmit calls, including cellular radiotelephone,  
4 broadband Personal Communications Services (PCS), and digital  
5 Specialized Mobile Radio (SMR). “Mobile telephony service”  
6 does not include mobile satellite telephone services or mobile data  
7 services used exclusively for the delivery of nonvoice information  
8 to a mobile device.

9 (e) ~~This section shall become operative on January 1, 2019.~~

10 ~~SEC. 3.~~

11 *SEC. 2.* Section 319 is added to the Public Utilities Code, to  
12 read:

13 319. (a) The commission shall annually, on or before October  
14 1 of each year, commencing October 1, 2015, compute a  
15 reimbursement fee as a percentage of the sales price for prepaid  
16 mobile telephony services, to be effective on January 1 of the  
17 following year and to be collected and remitted pursuant to the  
18 Prepaid Mobile Telephony Services Surcharge Collection Act (Part  
19 21 (commencing with Section 42001) of Division 2 of the Revenue  
20 and Taxation Code). On or before October 8 of each year,  
21 commencing October 8, 2015, the commission shall post notice  
22 of the reimbursement fee on its Internet Web site and notify both  
23 the Office of Emergency Services and the State Board of  
24 Equalization of this information as well as the computation method  
25 used to determine the reimbursement fee.

26 (b) The commission shall annually, on or before October 1 of  
27 each year, commencing October 1, 2015, compute the cumulative  
28 amount of the telecommunications universal service surcharges  
29 as a percentage of the sales price for prepaid mobile telephony  
30 services, to be effective on January 1 of the following year and to  
31 be collected and remitted pursuant to the Prepaid Mobile Telephony  
32 Services Surcharge Collection Act (Part 21 (commencing with  
33 Section 42001) of Division 2 of the Revenue and Taxation Code).  
34 On or before October 8 of each year, commencing October 8, 2015,  
35 the commission shall post notice of the cumulative surcharge on  
36 its Internet Web site and notify both the Office of Emergency  
37 Services and the State Board of Equalization of this information  
38 as well as the computation method used to determine the  
39 cumulative surcharge.

1 (c) (1) Except for the fees and surcharges computed pursuant  
2 to subdivisions (a) and (b), this section neither restricts the  
3 commission's authority to adjust reimbursement fees or universal  
4 service surcharges nor requires that they only be adjusted once  
5 annually.

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

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

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

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

32 (6) At least 30 days prior to adopting any adjustment to a  
33 reimbursement fee or universal service surcharge to be collected  
34 and remitted to the commission on both postpaid and prepaid  
35 intrastate service, the commission shall prepare a resolution or  
36 other public document proposing the fee or surcharge adjustment  
37 and explaining the calculation of the fee or surcharge. The  
38 commission shall make the resolution or other public document  
39 available to the public and on the commission's Internet Web site  
40 and it shall include all of the following:



1 (A) The prior year revenues from the fee or surcharge, including,  
2 but not limited to, revenues from prepaid service.

3 (B) Projected expenses and revenues from all sources, including,  
4 but not limited to, prepaid service, for the purposes of the fee or  
5 surcharge.

6 (C) The rationale for adjustment to the reimbursement fee or  
7 universal service surcharge, including, but not limited to, all  
8 impacts from prepaid service surcharge collection.

9 (d) The commission shall have enforcement authority to ensure  
10 the proper remittances over retail transactions, pursuant to the  
11 Prepaid Mobile Telephony Services Surcharge Collection Act (Part  
12 21 (commencing with Section 42001) of Division 2 of the Revenue  
13 and Taxation Code), where the prepaid mobile telephony services  
14 (prepaid MTS) provider is also the seller. The commission shall  
15 collaborate with the State Board of Equalization in exercising its  
16 enforcement authority pursuant to this subdivision.

17 (e) (1) ~~Notwithstanding any amounts collected and remitted to~~  
18 ~~the State Board of Equalization pursuant to the Prepaid Mobile~~  
19 ~~Telephony Services Surcharge Collection Act (Part 21~~  
20 ~~(commencing with Section 42001) of Division 2 of the Revenue~~  
21 ~~and Taxation Code), and deposited in the Prepaid MTS PUC~~  
22 ~~Account created pursuant to Section 42023 of the Revenue and~~  
23 ~~Taxation Code, carriers—Carriers providing prepaid mobile~~  
24 ~~telephony service shall remit to the commission the fee established~~  
25 ~~for telephone corporations pursuant to subdivision (a) of Section~~  
26 ~~431 on the intrastate portion of the revenues received for prepaid~~  
27 ~~mobile telephony service through December 31, 2016. 2015.~~

28 (2) ~~Notwithstanding any amounts collected and remitted to the~~  
29 ~~State Board of Equalization pursuant to the Prepaid Mobile~~  
30 ~~Telephony Services Surcharge Collection Act (Part 21~~  
31 ~~(commencing with Section 42001) of Division 2 of the Revenue~~  
32 ~~and Taxation Code), and deposited in the Prepaid MTS PUC~~  
33 ~~Account created pursuant to Section 42023 of the Revenue and~~  
34 ~~Taxation Code, carriers—Carriers providing prepaid mobile~~  
35 ~~telephony service shall remit to the commission the~~  
36 ~~telecommunications universal service surcharges established for~~  
37 ~~telephone corporations on the intrastate portion of the revenues~~  
38 ~~received for prepaid mobile telephony service through December~~  
39 ~~31, 2016. 2015.~~

1 (f) (1) This section does not relieve carriers providing prepaid  
2 mobile telephony service of their continuing obligation to report  
3 prepaid mobile telephony service revenues to the commission in  
4 a manner prescribed by the commission.

5 (2) When reporting prepaid mobile telephony service revenues  
6 to the commission, carriers providing prepaid mobile telephony  
7 service shall report the intrastate revenue portion subject to the  
8 reimbursement fee and the telecommunications universal service  
9 surcharges, as well as total state wireless revenue.

10 (3) Reports made pursuant to this subdivision are subject to  
11 Section 583 and any related orders of the commission.

12 ~~(g) This section shall remain in effect only until January 1, 2019,~~  
13 ~~and as of that date is repealed, unless a later enacted statute, that~~  
14 ~~is enacted before January 1, 2019, deletes or extends that date.~~

15 ~~SEC. 4.~~

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

18 431. (a) The commission shall annually determine a fee to be  
19 paid by every electrical, gas, telephone, telegraph, water, sewer  
20 system, and heat corporation and every other public utility  
21 providing service directly to customers or subscribers and subject  
22 to the jurisdiction of the commission other than a railroad, except  
23 as otherwise provided in Article 2 (commencing with Section 421),  
24 for common carriers and related businesses, and as otherwise  
25 provided in Section 319, for prepaid mobile telephony service  
26 providers.

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

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

38 ~~(d) This section shall remain in effect only until January 1, 2019,~~  
39 ~~and as of that date is repealed, unless a later enacted statute, that~~  
40 ~~is enacted before January 1, 2019, deletes or extends that date.~~

1 ~~SEC. 5.~~ Section 431 is added to the Public Utilities Code, to read:

2 431. (a) ~~The commission shall annually determine a fee to be~~  
3 ~~paid by every electrical, gas, telephone, telegraph, water, sewer~~  
4 ~~system, and heat corporation and every other public utility~~  
5 ~~providing service directly to customers or subscribers and subject~~  
6 ~~to the jurisdiction of the commission other than a railroad, except~~  
7 ~~as otherwise provided in Article 2 (commencing with Section 421).~~

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

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

19 (d) ~~On and after January 1, 1985, this article shall apply to~~  
20 ~~radiotelephone utilities as defined in Section 4902 as those~~  
21 ~~provisions read on December 31, 1984.~~

22 (e) ~~This section shall become operative on January 1, 2019.~~

23 ~~SEC. 6.~~

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

26 41020. (a) A surcharge is hereby imposed on amounts paid  
27 by every person in the state for both of the following:

28 (1) (A) Intrastate telephone communication service in this state.

29 (B) Notwithstanding subparagraph (A), on and after January 1,  
30 ~~2017, and before January 1, 2019, 2016,~~ in lieu of the surcharge  
31 imposed under subparagraph (A), a surcharge shall be imposed on  
32 amounts paid for prepaid mobile telephony services pursuant to  
33 the Prepaid Mobile Telephony Services Surcharge Collection Act  
34 (Part 21 (commencing with Section 42001)).

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

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

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

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

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

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

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

1 shall also be rebuttably presumed to be fair and legal business  
2 practices.

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

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

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

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

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

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

28 (f) For purposes of this section:

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

38 (2) "Customer" means (A) the person or entity that contracts  
39 with the home service provider for mobile telecommunications  
40 services, or with a VoIP service provider for VoIP service, or (B)

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

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

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

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

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

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

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

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

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

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

39 (9) “Taxing jurisdiction” means any of the several states, the  
40 District of Columbia, or any territory or possession of the United

1 States, any municipality, city, county, township, parish,  
2 transportation district, or assessment jurisdiction, or any other  
3 political subdivision within the territorial limits of the United States  
4 with the authority to impose a tax, charge, or fee.

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

9 (11) “Prepaid mobile telephony services” has the same meaning  
10 as in subdivision (j) of Section 42004.

11 ~~SEC. 7. Section 41020.5 is added to the Revenue and Taxation~~  
12 ~~Code, to read:~~

13 ~~41020.5. Notwithstanding any other provision of this part, on~~  
14 ~~and after January 1, 2016, and before January 1, 2017, a service~~  
15 ~~supplier shall not collect the surcharge imposed under this part on~~  
16 ~~the intrastate portion of charges made for prepaid mobile telephony~~  
17 ~~services, and the service supplier shall remit to the board an amount~~  
18 ~~equal to the amount of the surcharge that would have otherwise~~  
19 ~~been collected, reported, and remitted to the board under this part~~  
20 ~~on the intrastate portion of the charges made for prepaid mobile~~  
21 ~~telephony services.~~

22 ~~SEC. 8.~~

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

25 41030. (a) The Office of Emergency Services shall determine  
26 annually, on or before October 1, to be effective on January 1 of  
27 the following year, a surcharge pursuant to subdivision (b) that it  
28 estimates will produce sufficient revenue to fund the current fiscal  
29 year’s 911 costs.

30 (b) (1) Commencing with the calculation made on October 1,  
31 2014, the surcharge rate shall be determined by dividing the costs  
32 (including incremental costs) the Office of Emergency Services  
33 estimates for the current fiscal year of 911 plans approved pursuant  
34 to Section 53115 of the Government Code, less the available  
35 balance in the State Emergency Telephone Number Account in  
36 the General Fund, by its estimate of the charges for intrastate  
37 telephone communications services and VoIP service to which the  
38 surcharge will apply for the period of January 1, 2015, to December  
39 31, 2015, inclusive, but in no event shall the surcharge rate in any

1 year be greater than three-quarters of 1 percent or less than one-half  
2 of 1 percent.

3 (2) Commencing with the calculation made October 1, 2015,  
4 to be effective January 1, 2016, the surcharge shall be determined  
5 by dividing the costs (including incremental costs) the Office of  
6 Emergency Services estimates for the current fiscal year of 911  
7 plans approved pursuant to Section 53115 of the Government  
8 Code, less the available balance in the State Emergency Telephone  
9 Number Account in the General Fund, by its estimate of the charges  
10 for intrastate telephone communications services, the intrastate  
11 portion of prepaid mobile telephony services, and VoIP service to  
12 which the surcharge will apply for the period of January 1 to  
13 December 31, inclusive, of the next succeeding calendar year, but  
14 in no event shall the surcharge rate in any year be greater than  
15 three-quarters of 1 percent or less than one-half of 1 percent. In  
16 making its computation of the charges that are applicable to the  
17 intrastate portion of prepaid mobile telephony services, the Office  
18 of Emergency Services shall use the computation method  
19 developed by the Public Utilities Commission and reported to the  
20 Office of Emergency Services pursuant to subdivisions (a) and (b)  
21 of Section 319 of the Public Utilities Code.

22 (c) The Office of Emergency Services shall notify the board of  
23 the surcharge amount collected pursuant to this part and the  
24 surcharge amount applicable to prepaid mobile telephony services  
25 by October 15 of each year.

26 (d) At least 30 days prior to determining the surcharge pursuant  
27 to subdivision (a), the Office of Emergency Services shall prepare  
28 a summary of the calculation of the proposed surcharge and make  
29 it available to the public and on its Internet Web site. The summary  
30 shall contain all of the following:

31 (1) The prior year revenues to fund 911 costs, including, but  
32 not limited to, revenues from prepaid service.

33 (2) Projected expenses and revenues from all sources, including,  
34 but not limited to, prepaid service to fund 911 costs.

35 (3) The rationale for adjustment to the surcharge determined  
36 pursuant to subdivision (b), including, but not limited to, all  
37 impacts from the surcharge collected pursuant to Part 21  
38 (commencing with Section 42001).



1 ~~(e) This section shall remain in effect only until January 1, 2019,~~  
2 ~~and as of that date is repealed, unless a later enacted statute, that~~  
3 ~~is enacted before January 1, 2019, deletes or extends that date.~~

4 ~~SEC. 9. Section 41030 is added to the Revenue and Taxation~~  
5 ~~Code, to read:~~

6 ~~41030. (a) The Office of Emergency Services shall determine~~  
7 ~~annually, on or before October 1, a surcharge rate that it estimates~~  
8 ~~will produce sufficient revenue to fund the current fiscal year's~~  
9 ~~911 costs. The surcharge rate shall be determined by dividing the~~  
10 ~~costs (including incremental costs) the Office of Emergency~~  
11 ~~Services estimates for the current fiscal year of 911 plans approved~~  
12 ~~pursuant to Section 53115 of the Government Code, less the~~  
13 ~~available balance in the State Emergency Telephone Number~~  
14 ~~Account in the General Fund, by its estimate of the charges for~~  
15 ~~intrastate telephone communications services and VoIP service to~~  
16 ~~which the surcharge will apply for the period of January 1 to~~  
17 ~~December 31, inclusive, of the next succeeding calendar year, but~~  
18 ~~in no event shall such surcharge rate in any year be greater than~~  
19 ~~three-quarters of 1 percent or less than one-half of 1 percent.~~

20 ~~(b) At least 30 days prior to determining the surcharge pursuant~~  
21 ~~to subdivision (a), the Office of Emergency Services shall prepare~~  
22 ~~a summary of the calculation of the proposed surcharge and make~~  
23 ~~it available to the public and on its Internet Web site. The summary~~  
24 ~~shall contain all of the following:~~

- 25 ~~(1) The prior year's revenues to fund 911 costs.~~
- 26 ~~(2) Projected expenses and revenues from all sources.~~
- 27 ~~(3) The rationale for adjustment to the surcharge determined~~  
28 ~~pursuant to subdivision (b), including, but not limited to, all~~  
29 ~~impacts from the surcharge collected pursuant to Part 21~~  
30 ~~(commencing with Section 42001) as it existed on December 31,~~  
31 ~~2017.~~

32 ~~(e) This section shall become operative on January 1, 2019.~~

33 ~~SEC. 10.~~

34 ~~SEC. 6. Part 21 (commencing with Section 42001) is added to~~  
35 ~~Division 2 of the Revenue and Taxation Code, to read:~~

1 PART 21. PREPAID MOBILE TELEPHONY SERVICES  
2 SURCHARGE COLLECTION ACT

3  
4 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS  
5

6 42001. This part shall be known, and may be cited, as the  
7 Prepaid Mobile Telephony Services Surcharge Collection Act.

8 42002. The Legislature finds and declares all of the following:

9 (a) Maintaining effective and efficient communications services,  
10 911 emergency systems, communications-related public policy  
11 programs to promote universal service, and various local programs  
12 across the state benefits all persons with access to the  
13 telecommunications system.

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

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

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

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

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

39 (g) An equitable distribution mechanism is necessary to ensure  
40 that utility user taxes and other telecommunication charges are

1 collected on behalf of cities and counties and are properly  
2 distributed to those jurisdictions.

3 42004. For purposes of this part, the following terms have the  
4 following meanings:

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

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

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

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

15 (e) “Local jurisdiction” or “local agency” means a city, county,  
16 or city and county, which includes a charter city, county, or city  
17 and county.

18 (f) “Mobile data service” has the same meaning as defined in  
19 Section 224.4 of the Public Utilities Code.

20 (g) “Mobile telephony service” or “MTS” has the same meaning  
21 as defined in Section 224.4 of the Public Utilities Code.

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

29 (i) “Prepaid consumer” or “consumer” means a person who  
30 purchases prepaid mobile telephony services in a retail transaction.

31 (j) “Prepaid mobile telephony services” means the right to utilize  
32 a mobile device authorized by the Federal Communications  
33 Commission for mobile telecommunications services or  
34 information services, including the download of digital products  
35 delivered electronically, content, and ancillary services, or both  
36 telecommunications services and information services, that must  
37 be purchased in advance of usage in predetermined units or dollars.  
38 For these purposes, “telecommunications service” and “information  
39 service” have the same meanings as defined in Section 153 of Title  
40 47 of the United States Code.

1 (k) “Prepaid MTS provider” means a person that provides  
2 prepaid mobile telephony services pursuant to a license issued by  
3 the Federal Communications Commission.

4 (l) “Prepaid MTS surcharge” means the surcharge that consists  
5 of the emergency telephone users surcharge and the Public Utilities  
6 Commission surcharges, as calculated pursuant to subdivision (b)  
7 of Section 42010, that is required to be collected by a seller from  
8 a prepaid consumer.

9 (m) “Public Utilities Commission surcharges” means surcharges  
10 authorized by the Public Utilities Commission to be billed and  
11 collected from end-use consumers of wireless communications  
12 services, and of which the commission provides the board with  
13 notice pursuant to Section 319 of the Public Utilities Code,  
14 including:

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

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

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

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

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

28 (6) The Moore Universal Telephone Service Act (Article 8  
29 commencing with Section 871) of Chapter 4 of Part 1 of Division  
30 1 of the Public Utilities Code).

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

34 (n) “Retail transaction” means the purchase of prepaid mobile  
35 telephony services, either alone or in combination with mobile  
36 data or other services, from a seller for any purpose other than  
37 resale in the regular course of business. For these purposes, a  
38 “purchase” means any transfer of title or possession, exchange, or  
39 barter, conditional or otherwise.

1 (o) “Seller” means a person that sells prepaid mobile telephony  
2 service to a person in a retail transaction.

3  
4 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES  
5 SURCHARGE  
6

7 42010. (a) (1) On and after January 1, 2016, a prepaid MTS  
8 surcharge shall be imposed on each prepaid consumer and shall  
9 be collected by a seller from each prepaid consumer at the time of  
10 each retail transaction in this state. The prepaid MTS surcharge  
11 shall be imposed as a percentage of the sales price of each retail  
12 transaction that occurs in this state.

13 (2) ~~On and after January 1, 2017, the~~ *The* prepaid MTS  
14 surcharge shall be in lieu of any charges imposed pursuant to the  
15 Emergency Telephone Users Surcharge Act (Part 20 (commencing  
16 with Section 41001)) and the Public Utilities Commission  
17 surcharges for prepaid mobile telephony services.

18 (b) The prepaid MTS surcharge shall be annually calculated by  
19 the board by no later than November 1 of each year commencing  
20 November 1, 2015, by adding the following:

21 (1) The surcharge rate reported pursuant to subdivision (c) of  
22 Section 41030.

23 (2) The Public Utilities Commission’s reimbursement fee and  
24 telecommunications universal service surcharges, established by  
25 the Public Utilities Commission pursuant to subdivisions (a) and  
26 (b) of Section 319 of the Public Utilities Code.

27 (c) (1) The board shall post, for each local jurisdiction, the  
28 combined total of the rates of prepaid MTS surcharge and the rate  
29 or rates of local charges, as calculated pursuant to Sections 42102  
30 and 42102.5, that each local jurisdiction has adopted, not later than  
31 December 1 of each year, on its Internet Web site. The posted  
32 combined rate shall be the rate that applies to all retail transactions  
33 during the calendar year beginning April 1 following the posting.

34 (2) Notwithstanding paragraph (1), if a local agency notifies  
35 the board pursuant to subdivision (d) of Section 42101.5 that the  
36 posted rate is inaccurate or it no longer imposes a local charge or  
37 local charges or that the rate of its local charge or local charges  
38 has decreased, the board shall promptly post a recalculated rate  
39 that is applicable to the jurisdiction of that local agency. The  
40 change shall become operative on the first day of the calendar

1 quarter commencing more than 60 days from the date the local  
 2 agency notifies the board of the inaccuracy or that it no longer  
 3 imposes a local charge or that the rate of its local charge has  
 4 decreased. Nothing in this section modifies the notice obligations  
 5 of Section 799 of the Public Utilities Code. However, beginning  
 6 January 1, 2016, the notification and implementation requirements  
 7 of paragraphs (5) and (6) of subdivision (a) of Section 799 of the  
 8 Public Utilities Code shall not apply to prepaid mobile telephony  
 9 services.

10 (3) A seller collecting the prepaid MTS surcharge and local  
 11 charges pursuant to this part and Part 21.1 (commencing with  
 12 Section 42100) may rely upon the accuracy of the information  
 13 posted on the board’s Internet Web site in collecting the state  
 14 surcharge and local charges.

15 (d) (1) Except for amounts retained pursuant to subdivision (e),  
 16 all amounts of the prepaid MTS surcharge and local charges  
 17 collected by sellers shall be remitted to the board pursuant to  
 18 Chapter 3 (commencing with Section 42020).

19 (2) A seller that is authorized to provide lifeline service under  
 20 the state lifeline program or federal lifeline program, that sells  
 21 prepaid mobile telephony services directly to the prepaid customer,  
 22 shall remit the prepaid MTS surcharge to the board, less any  
 23 applicable exemption from the surcharge that is applicable to the  
 24 retail transaction pursuant to Section 42012.

25 (e) A seller shall be permitted to deduct and retain an amount  
 26 equal to 2 percent of the amounts that are collected by the seller  
 27 from prepaid consumers for the prepaid MTS surcharge and local  
 28 charges, except in a retail transaction that involves both of the  
 29 following:

30 (1) The seller is the provider of prepaid mobile telephony  
 31 services pursuant to Section 224.4 of the Public Utilities Code, or  
 32 a telephone corporation pursuant to Section 234 of the Public  
 33 Utilities Code.

34 (2) The seller sells the prepaid mobile telephony services directly  
 35 to the prepaid consumer.

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

1 electronically to the prepaid consumer, at the time of the retail  
2 transaction.

3 (g) The prepaid MTS surcharge is required to be collected by  
4 a seller and any amount unreturned to the prepaid consumer of  
5 mobile telephony services that is not owed as part of the surcharge,  
6 but was collected from the prepaid consumer under the  
7 representation by the seller that it was owed as part of the  
8 surcharge, constitute debts owed by the seller to this state. The  
9 local charge shall be collected by a seller, and any amount  
10 unreturned to the prepaid consumer of mobile telephony services  
11 that is not owed as part of the local charge but that was collected  
12 from the prepaid consumer under the representation by the seller  
13 that it was owed as part of the local charge constitutes a debt owed  
14 by the seller jointly to the state, for purposes of collection on behalf  
15 of, and payment to, the local jurisdiction and to the local  
16 jurisdiction imposing that local charge.

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.

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

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

10 (j) (1) A seller is relieved from liability to collect the prepaid  
11 MTS surcharge imposed by this part that became due and payable,  
12 insofar as the base upon which the surcharge is imposed is  
13 represented by accounts that have been found to be worthless and  
14 charged off for income tax purposes by the seller or, if the seller  
15 is not required to file income tax returns, charged off in accordance  
16 with generally accepted accounting principles. A seller that has  
17 previously paid the surcharge may, under rules and regulations  
18 prescribed by the board, take as a deduction on its return the  
19 amount found worthless and charged off by the seller. If any such  
20 accounts are thereafter in whole or in part collected by the seller,  
21 the amount so collected shall be included in the first return filed  
22 after such collection and the surcharge shall be paid with the return.

23 (2) The board may by regulation promulgate such other rules  
24 with respect to uncollected or worthless accounts as it shall deem  
25 necessary to the fair and efficient administration of this part.

26 42012. (a) For purposes of this section, “state lifeline program”  
27 means the program furnishing lifeline voice communication service  
28 pursuant to the Moore Universal Telephone Service Act (Article  
29 8 (commencing with Section 871) of Chapter 4 of Part 1 of  
30 Division 1 of the Public Utilities Code).

31 (b) The purchase in a retail transaction in this state of prepaid  
32 mobile telephony services, either alone or in combination with  
33 mobile data or other services, by a consumer is exempt from the  
34 prepaid MTS surcharge if all of the following apply:

35 (1) The prepaid consumer is certified as eligible for the state  
36 lifeline program or federal lifeline program.

37 (2) The seller is authorized to provide lifeline service under the  
38 state lifeline program or federal lifeline program.

39 (3) The exemption is applied only to the amount paid for the  
40 portion of the prepaid mobile telephony service that the lifeline



1 program specifies is exempt from the surcharges and fees that  
2 comprise the prepaid MTS surcharge.

3 42014. (a) For purposes of this part, a retail transaction occurs  
4 in the state under any of the following circumstances:

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

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

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

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

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

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

24 (b) (1) A retail transaction shall occur at only one location for  
25 purposes of determining local charges. If the retail transaction is  
26 a point-of-sale transaction, the consumption of, use of, or access  
27 to, the prepaid mobile telephony service shall be presumed to be  
28 at that location.

29 (2) If the retail transaction is a known-address transaction, the  
30 location shall be as determined in descending order beginning with  
31 subparagraph (A) of paragraph (2) of subdivision (a); if  
32 subparagraph (A) of that paragraph is inapplicable, then pursuant  
33 to subparagraph (B) of that paragraph; if both subparagraphs (A)  
34 and (B) of that paragraph are inapplicable, then subparagraph (C)  
35 of that paragraph; and if subparagraphs (A), (B), and (C) of that  
36 paragraph are inapplicable, then subparagraph (D) of that  
37 paragraph. In a known address transaction, the consumption of,  
38 use of, or access to, the prepaid mobile telephony service shall be  
39 presumed to be at the known address.

1 (c) (1) A seller that relies in good faith on information provided  
2 by the board to match the location of a point-of-sale transaction  
3 to the applicable prepaid MTS surcharge amount and local charges,  
4 that collects that amount from the prepaid consumer, and that  
5 remits the amount to the board in compliance with this part, shall  
6 not be liable for any additional MTS surcharge or local charges  
7 and shall not be required to refund any amounts collected and paid  
8 to the board to the prepaid consumer.

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

22 42018. (a) Except as provided in subdivisions (b) and (c), if  
23 prepaid mobile telephony services are sold in combination with  
24 mobile data services or any other services or products for a single  
25 price, then the prepaid MTS surcharge and local charges shall  
26 apply to the entire price.

27 (b) If prepaid mobile telephone services are sold with a mobile  
28 telephone service communication device, commonly termed a  
29 cellular telephone, for a single, nonitemized price, then the prepaid  
30 MTS surcharge and local charges shall apply to the entire  
31 nonitemized price, except if the purchase price for the cellular  
32 phone component of the bundled charge is disclosed to the prepaid  
33 consumer on a receipt, invoice, or other written or electronic  
34 documentation provided to the prepaid consumer, the prepaid MTS  
35 surcharge and local charges may be calculated excluding the  
36 separately stated price of the cellular telephone.

37 (c) 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~~ *device*, the seller shall not apply the prepaid  
40 MTS surcharge or local charges to the transaction. For these

1 purposes, a service allotment denominated as 10 minutes or less,  
2 or five dollars (\$5) or less, is a minimal amount.

3  
4 CHAPTER 3. ADMINISTRATION  
5

6 42020. (a) (1) The board shall administer and collect the  
7 prepaid MTS surcharge imposed by this part pursuant to the Fee  
8 Collection Procedures Law (Part 30 (commencing with Section  
9 55001)). For purposes of this part, the references in the Fee  
10 Collection Procedures Law to “fee” shall include the prepaid MTS  
11 surcharge imposed by this part, and references to “feepayer” shall  
12 include a person required to pay the surcharge imposed by this  
13 part, which includes the seller, who shall be required to register  
14 with the board.

15 (2) Notwithstanding Article 1.1 (commencing with Section  
16 55050) of Chapter 3 of Part 30, any person required, or that elects,  
17 to remit amounts due under Part 1 (commencing with Section  
18 6001) by electronic funds transfer pursuant to Article 1.2  
19 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall  
20 remit prepaid MTS surcharge amounts due under this section by  
21 electronic funds transfer.

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

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

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

38 (d) The board shall establish procedures for sharing of  
39 information, other than information protected under Section 19542,  
40 related to the collection of the prepaid MTS surcharge upon the

1 request of the Public Utilities Commission or the Office of  
2 Emergency Services.

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

8 (a) The prepaid MTS surcharge, minus the amount retained by  
9 the seller pursuant to subdivision (e) of Section 42010, is due and  
10 payable to the board quarterly on or before the last day of the  
11 month following each calendar quarter.

12 (b) On or before the last day of the month following each  
13 calendar quarter, a return for the preceding calendar quarter shall  
14 be filed using electronic media with the board.

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

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

28 42023. (a) The Prepaid Mobile Telephony Services Surcharge  
29 Fund is hereby created in the State Treasury. The Prepaid MTS  
30 911 Account and the Prepaid MTS PUC Account are hereby  
31 created in the fund. The Prepaid Mobile Telephony Services  
32 Surcharge Fund shall consist of all surcharges, interest, penalties,  
33 and other amounts collected and paid to the board pursuant to this  
34 part, less payments of refunds and reimbursements to the board  
35 for expenses incurred in the administration and collection of the  
36 prepaid MTS surcharge.

37 (b) All moneys in the Prepaid Mobile Telephony Services  
38 Surcharge Fund attributable to the prepaid MTS surcharge shall  
39 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, fund, or account.

14 ~~42024. This part shall remain in effect only until January 1,~~  
15 ~~2019, and as of that date is repealed, unless a later enacted statute,~~  
16 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

17 ~~SEC. 11.~~

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) The Legislature finds and declares all of the following:

27 (1) Maintaining effective and efficient communications services,  
28 911 emergency systems, communications-related public policy  
29 programs to promote universal service, and various local programs  
30 across the state benefit all persons with access to the  
31 telecommunications system.

32 (2) Providers of end-use communications services, including  
33 providers of mobile voice telecommunications services, which the  
34 Federal Communications Commission terms mobile telephony  
35 service, are required to collect and remit utility users taxes and  
36 local 911 or access charges (local charges) imposed by over 150  
37 cities and counties in California on end-users of such mobile  
38 telephony services, as required by existing state or local law.

39 (3) Local charges on telecommunication services represent an  
40 important source of tax revenue for many cities and counties and

1 are used to pay for such essential governmental services as public  
2 safety, streets, parks, libraries, senior centers, and many more.

3 (4) Prepaid mobile telephony services are an important and  
4 growing segment of the communications industry. Prepaid mobile  
5 telephony services, unlike postpaid mobile telephony services, are  
6 frequently sold by a third-party seller that is not the provider of  
7 mobile telephony services, and collecting local charges from  
8 prepaid consumers of mobile telephony services at the time of the  
9 retail transaction is necessary and the most efficient and  
10 competitively neutral means for the collection of those local  
11 charges.

12 (5) The collection of prepaid mobile telephony services by  
13 third-party sellers and the remittance of those local charges to the  
14 board involves administrative costs and responsibilities that are  
15 unique to prepaid mobile telephony services, and therefore justify  
16 unique reimbursement and tax rate simplification measures, which  
17 are fair and reasonable.

18 (c) It is a matter of statewide concern that the local charges for  
19 local prepaid mobile telephony services be collected in a uniform  
20 manner in order for the collection to be fair and uniform on a  
21 statewide basis.

22 (d) It is the intention of the Legislature that this part shall  
23 preempt the provisions pertaining to the tax or charge rate, base,  
24 and method of collection contained in all local ordinances, rules,  
25 or regulations concerning the imposition of a local charge upon  
26 the consumption of prepaid mobile telephony services to the extent  
27 those provisions are inconsistent with the provisions of this part  
28 and Part 21 (commencing with Section 42001). It is not the intent  
29 of the Legislature to otherwise preempt, limit, or affect the general  
30 authority of local jurisdictions to impose a utility user tax, local  
31 911 charge, or any other local charges.

32 42101. For purposes of this part, all of the following definitions  
33 shall apply:

34 (a) “Local agency” means a city, county, or city and county,  
35 which includes a charter city, county, or city and county.

36 (b) “Local charge” means the utility user taxes as described in  
37 Section 42102, and charges for access to communication services  
38 or to local “911” emergency telephone systems, as described in  
39 Section 42102.5.

1 (c) “Ordinance” refers to an ordinance of a local agency  
2 imposing a local charge, including any local enactment relating to  
3 the filing of a refund or a claim arising under the ordinance.

4 (d) “Board,” “local jurisdiction,” “mobile telephony service,”  
5 “person,” “prepaid consumer,” “Prepaid mobile telephony service,”  
6 “prepaid MTS provider,” and “prepaid MTS surcharge” have the  
7 same meaning as those terms are defined in the Prepaid Mobile  
8 Telephony Services Surcharge Collection Act (Part 21  
9 commencing with Section 42001).

10 42101.5. (a) On and after January 1, 2016, a local charge  
11 imposed by a local agency on prepaid mobile telephony services  
12 shall be collected from the prepaid consumer by a seller at the  
13 same time and in the same manner as the prepaid MTS surcharge  
14 is collected under Part 21 (commencing with Section 42001) if,  
15 on or before September 1, 2015, the local agency shall enter into  
16 a contract with the board for the board to perform the functions  
17 set forth in Section 42103. In the contract, the local agency shall:  
18 (1) certify to the board that its ordinance applies its local charge  
19 to prepaid mobile telephony services and that the local agency  
20 agrees to indemnify, and hold and save harmless, the board, its  
21 officers, agents, and employees for any and all liability for damages  
22 that may result from collection pursuant to the contract; and, (2)  
23 certify to the board the amount of the local 911 charge, as set out  
24 in Section 42102.5, or the applicable tiered rate for a utility user  
25 tax, as set out in Section 42102.

26 (b) In the event that a local agency adopts a new local charge  
27 that is imposed on prepaid mobile telephony services after  
28 September 1, 2015, the local agency shall enter into a contract  
29 with the board to perform the functions set forth in Section 42103,  
30 on or before December 1, with collection of the local charge to  
31 commence April 1 of the next calendar year. In the contract, the  
32 local agency shall certify to the board: (1) that its ordinance applies  
33 its local charge to prepaid mobile telephony services and that the  
34 local agency agrees to indemnify, and hold and save harmless, the  
35 board, its officers, agents, and employees for any and all liability  
36 for damages that may result from collection pursuant to the  
37 contract; and, (2) the amount of the local 911 charge, as set out in  
38 Section 42102.5, or the applicable tiered rate for a utility user tax,  
39 as set out in Section 42102.

1 (c) In the event that a local agency increases its local charge  
2 after September 1, 2015, the local agency shall provide the board  
3 with written notice of the increased local charge on or before  
4 December 1, with collection of the local charge to commence April  
5 1 of the next calendar year.

6 (d) In the event that a local agency reduces or eliminates a local  
7 charge on prepaid mobile telephony services, the local agency  
8 shall provide the board with written notice pursuant to subdivision  
9 (c) of Section 42010.

10 (e) Notwithstanding subdivision (a), through and including  
11 December 31, 2015, a prepaid MTS provider may elect to remit  
12 the local charge to the appropriate local taxing jurisdiction based  
13 on the applicable tax rate of Section 42102, Section 42102.5, or  
14 both, and those remittances shall be deemed to be in full  
15 compliance with the local ordinance imposing a local charge on  
16 prepaid mobile telephony service.

17 42102. (a) Notwithstanding any other law, on and after January  
18 1, 2016, the authority of a city, county, or city and county, which  
19 includes a charter city, county, or city and county, to impose a  
20 utility user tax on the consumption of prepaid mobile telephony  
21 service in the city, county, or city and county at the rate as specified  
22 in an ordinance authorized pursuant to Section 7284.2 or any other  
23 law is suspended, and the utility user tax rate to be applied instead  
24 during the period under any ordinance as so adopted is the  
25 applicable of the following:

26 (1) In the case of a city, county, or city and county that has  
27 adopted an ordinance to impose a utility user tax on the  
28 consumption of prepaid communication services in the city, county,  
29 or city and county at the rate of less than 1.5 percent, the rate shall  
30 be 0 percent.

31 (2) In the case of a city, county, or city and county that has  
32 adopted an ordinance to impose a utility user tax on the  
33 consumption of prepaid communication services in the city, county,  
34 or city and county at the rate of 1.5 percent or more but less than  
35 2.5 percent, the rate shall be 1.5 percent.

36 (3) In the case of a city, county, or city and county that has  
37 adopted an ordinance to impose a utility user tax on the  
38 consumption of prepaid communication services in the city, county,  
39 or city and county at the rate of 2.5 percent or more but less than  
40 3.5 percent, the rate shall be 2.5 percent.



1 (4) In the case of a city, county, or city and county that has  
2 adopted an ordinance to impose a utility user tax on the  
3 consumption of prepaid communication services in the city, county,  
4 or city and county at the rate of 3.5 percent or more but less than  
5 4.5 percent, the rate shall be 3.5 percent.

6 (5) In the case of a city, county, or city and county that has  
7 adopted an ordinance to impose a utility user tax on the  
8 consumption of prepaid communication services in the city, county,  
9 or city and county at the rate of 4.5 percent or more but less than  
10 5.5 percent, the rate shall be 4.5 percent.

11 (6) In the case of a city, county, or city and county that has  
12 adopted an ordinance to impose a utility user tax on the  
13 consumption of prepaid communication services in the city, county,  
14 or city and county at the rate of 5.5 percent or more but less than  
15 6.5 percent, the rate shall be 5.5 percent.

16 (7) In the case of a city, county, or city and county that has  
17 adopted an ordinance to impose a utility user tax on the  
18 consumption of prepaid communication services in the city, county,  
19 or city and county at the rate of 6.5 percent or more but less than  
20 7.5 percent, the rate shall be 6.5 percent.

21 (8) In the case of a city, county, or city and county that has  
22 adopted an ordinance to impose a utility user tax on the  
23 consumption of prepaid communication services in the city, county,  
24 or city and county at the rate of 7.5 percent or more but less than  
25 9 percent, the rate shall be 7.5 percent.

26 (9) In the case of a city, county, or city and county that has  
27 adopted an ordinance to impose a utility user tax on the  
28 consumption of prepaid communication services in the city, county,  
29 or city and county at the rate of 9 percent or more, the rate shall  
30 be 9 percent.

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

38 (c) Notwithstanding subdivision (a), a city, county, or city and  
39 county may levy, increase, or extend a utility user tax at any rate  
40 on the consumption of communication services, including a utility

1 user tax on the consumption of prepaid mobile telephony service,  
2 except that during the period on and after January 1, 2016, any  
3 utility user tax rate on prepaid mobile telephony service under any  
4 ordinance as so adopted shall be the applicable rate specified in  
5 subdivision (a).

6 (d) On and after January 1, 2016, this part shall be all of the  
7 following:

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

9 (A) Collecting the local utility user taxes, local 911 charges,  
10 and any other local charges imposed on consumers using prepaid  
11 mobile telephony services.

12 (B) Defining the scope of the tax or charge with respect to  
13 prepaid mobile telephony services.

14 (2) The complete substitute for the utility user tax rate set out  
15 in the local ordinance with the applicable tiered rate as established  
16 by the Legislature.

17 (3) This part shall not preempt, limit, or affect the general  
18 authority of local jurisdictions to impose a utility user tax, local  
19 911 charge, or any other local charges.

20 42102.5. (a) Notwithstanding any other law, on and after  
21 January 1, 2016, the authority of a city, county, or city and county,  
22 which includes a charter city, county, or city and county, to impose  
23 a charge, that applies to prepaid mobile telephony service, for  
24 access to communication services or access to local “911”  
25 emergency telephone systems in the city, county, or city and county  
26 at the rate as specified in an ordinance is suspended, and the rate  
27 to be applied instead during that period under any ordinance as so  
28 adopted is the applicable of the following:

29 (1) In the case of a city, county, or city and county that has  
30 adopted an ordinance to impose a charge that applies to prepaid  
31 mobile telephony service for access to communication services or  
32 access to local “911” emergency telephone systems in the city,  
33 county, or city and county at the rate of less than one dollar (\$1)  
34 per month per access line, including any adjustments for inflation,  
35 the rate shall be 0 percent.

36 (2) In the case of a city, county, or city and county that has  
37 adopted an ordinance to impose a charge that applies to prepaid  
38 mobile telephony service for access to communication services or  
39 access to local “911” emergency telephone systems in the city,  
40 county, or city and county at a specified percentage or at the rate

1 of one dollar (\$1) per month per access line, including any  
2 adjustments for inflation, or more, the rate shall be the specified  
3 percentage or the rate obtained by dividing the dollar amount by  
4 50, rounded to the nearest one-tenth of 1 percent.

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

12 (c) Notwithstanding subdivision (a), a city, county, or city and  
13 county may levy, increase, or extend a charge at any rate, that  
14 applies to prepaid mobile telephony services, for access to  
15 communication services or access to local “911” emergency  
16 telephone systems in the city, county, or city and county, except  
17 that during the period on and after January 1, 2016, any charge on  
18 prepaid mobile telephony service under any ordinance as so  
19 adopted shall be the applicable rate specified in subdivision (a).

20 42103. (a) The board shall perform all functions incident to  
21 the collection of the local charges of a city, county, or a city and  
22 county, and shall collect and administer the local charges in the  
23 manner prescribed for the collection of the prepaid MTS surcharge  
24 in the Prepaid Mobile Telephony Services Surcharge Collection  
25 Act (Part 21 (commencing with Section 42001)), subject to the  
26 limitations set forth in Section 42105. For purposes of this part,  
27 the references in the Fee Collection Procedures Law to “fee” shall  
28 include the local charge imposed by this part, and references to  
29 “feepayer” shall include a person required to pay the local charge  
30 imposed by this part, which includes the seller.

31 (b) All local charges collected by the board shall be deposited  
32 in the Local Charges for Prepaid Mobile Telephony Services Fund  
33 which is hereby created in the State Treasury, and shall be held in  
34 trust for the local taxing jurisdiction, and shall not be used for any  
35 other purpose. Local charges shall consist of all taxes, charges,  
36 interest, penalties, and other amounts collected and paid to the  
37 board, less payments for refunds and reimbursement to the board  
38 for expenses incurred in the administration and collection of the  
39 local charges. The board shall transmit the funds to the local  
40 jurisdictions periodically as promptly as feasible. The transmittals

1 required under this section shall be made at least once in each  
2 calendar quarter. The board shall furnish a quarterly statement  
3 indicating the amounts paid and withheld.

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

7 (d) The board's audit duties under this part shall be limited to  
8 verification that the seller complied with this part.

9 (e) The board may contract with a third party for purposes of  
10 this part, solely in connection with the following board duties:

11 (1) To allocate and transmit collected local charges in the Local  
12 Charges for Prepaid Mobile Telephony Services Fund pursuant to  
13 subdivision (b) to the appropriate local jurisdictions.

14 (2) To audit proper collection and remittance of the local charge  
15 pursuant to this part.

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

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

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

24 (2) A third-party contract shall not provide, in whole or in part,  
25 in any manner a contingent fee arrangement as payment for services  
26 rendered. For purposes of this section, "contingent fee" includes,  
27 but is not limited to, a fee that is based on a percentage of the tax  
28 liability reported on a return, a fee that is based on a percentage  
29 of the taxes owed, or a fee that depends on the specific tax result  
30 attained.

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

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

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

38 (3) Responding to any claim for refund by a customer arising  
39 under subdivision (b), (c), or (d). The claim shall be processed in

1 accordance with the provisions of the local enactment that allows  
2 the claim to be filed.

3 (4) Certifying that the city, county, or city and county ordinance  
4 applies the local charge to prepaid mobile telephony services and  
5 agreeing to indemnify and hold harmless the board, its officers,  
6 agents, and employees for any and all liability for damages that  
7 may result from collection of the local charge.

8 (5) Reallocation of local charges as a result of correcting errors  
9 relating to the location of the point of sale of a seller or the known  
10 address of a consumer, for up to two past quarters from the date  
11 of knowledge.

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

20 (c) A consumer that is exempt from the local charge under the  
21 local enactment may file a claim for a refund from the local  
22 jurisdiction in accordance with the refund provisions of the local  
23 enactment that allows the claim to be filed.

24 (d) In connection with any actions or claims relating to or arising  
25 from the invalidity of a local tax ordinance, in whole or in part,  
26 the seller shall not be liable to any consumer as a consequence of  
27 collecting the tax. In the event a local jurisdiction is ordered to  
28 refund the tax, it shall be the sole responsibility of the local  
29 jurisdiction to refund the tax. In any action seeking to enjoin  
30 collection of a local charge by a seller, in any action seeking  
31 declaratory relief concerning a local charge, in any action seeking  
32 a refund of a local charge, or in any action seeking to otherwise  
33 invalidate a local charge, the sole necessary party defendant in the  
34 action shall be the local jurisdiction on whose behalf the local  
35 charge is collected, and the seller collecting the local charge shall  
36 not be named as a party in the action. There shall be no recovery  
37 from the state for the imposition of any unconstitutional or  
38 otherwise invalid local charge that is collected pursuant to this  
39 part.

40 42106. (a) For purposes of this section:

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

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

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

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

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

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

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

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

33 42107. The city, county, or city and county shall pay to the  
34 board its costs of preparation to administer and collect local  
35 charges. The city, county, or city and county shall pay costs  
36 monthly as are incurred and billed by the board. The costs include  
37 all preparatory costs, including costs of developing procedures,  
38 programming for data processing, developing and adopting  
39 appropriate regulations, designing and printing of forms,  
40 developing instructions for the board’s staff and for taxpayers, and

1 other necessary preparatory costs which shall include the board's  
2 direct and indirect costs as specified by Section 11256 of the  
3 Government Code. Any disputes as to the amount of preparatory  
4 costs incurred shall be resolved by the Director of Finance, and  
5 his or her decision shall be final.

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 surcharge  
25 and local charges to be collected for the county, city and county,  
26 city, or district by the board pursuant to contract entered into  
27 between the board and the county, city and county, city, or district  
28 pursuant to this part. Except as otherwise provided in this section,  
29 this subdivision does not allow any officer, employee, or other  
30 person authorized or designated by a county, city and county, city,  
31 or district to examine any sales or transactions and use tax records  
32 of any taxpayer. The costs that are incurred by the board in  
33 complying with a request made pursuant to this subdivision shall  
34 be deducted by the board from those revenues collected by the  
35 board on behalf of the county, city and county, city, or district  
36 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 contained  
5 in, or derived from, those prepaid mobile telephony services  
6 surcharge and local charge records only to an officer or employee  
7 of the county, city and county, city, or district who is authorized  
8 by the resolution to examine the information.

9 (C) Is prohibited by that contract from performing consulting  
10 services for a seller 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 has  
14 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 ~~42111. This part shall remain in effect only until January 1,~~  
34 ~~2019, and as of that date is repealed, unless a later enacted statute,~~  
35 ~~that is enacted before January 1, 2019, deletes or extends that date.~~

36 ~~SEC. 12. The repeal of any provision of Part 21 (commencing~~  
37 ~~with Section 42001), and Part 21.1 (commencing with Section~~  
38 ~~42100), of Division 2, of the Revenue and Taxation Code, shall~~  
39 ~~not affect the collection of the prepaid MTS surcharge, the liability~~  
40 ~~of which accrued prior to January 1, 2019, the making of any~~



1 ~~refunds and effecting of any credits, the disposition of money~~  
2 ~~collected, nor shall the repeal affect any act done or any right~~  
3 ~~accruing or accrued, or any suit or proceeding had or commenced~~  
4 ~~in any civil cause, before that repeal; but all rights and liabilities~~  
5 ~~under that law shall continue, and may be enforced in the same~~  
6 ~~manner, as if the repeal had not been made.~~

7 ~~SEC. 13.~~

8 *SEC. 8.* No inference shall be drawn from the enactment of  
9 this act with respect to any remittance requirements of a prepaid  
10 MTS provider pursuant to the law as it existed prior to the  
11 enactment of this act. Additionally, nothing in this act shall affect  
12 any remittance requirements of a prepaid mobile telephony services  
13 provider for any service other than prepaid mobile telephony  
14 services. Nothing in this act shall affect the federal remittance  
15 requirements of a prepaid mobile telephony services provider.

16 ~~SEC. 14.~~

17 *SEC. 9.* It is the intent of the Legislature that the remittance  
18 obligations of a prepaid mobile telephony services provider,  
19 relating to emergency telephone users surcharge and any charges  
20 imposed by the Public Utilities Commission pursuant to Chapter  
21 2.5 (commencing with Section 401) of Part 1 of Division 1 of the  
22 Public Utilities Code or for purposes of the universal services  
23 programs, shall continue to remain subject to the law existing prior  
24 ~~to the effective date of this act until January 1, 2017. However,~~  
25 ~~the law existing prior to the effective date of this act shall remain~~  
26 applicable for each of the following:

27 (a) The collection of surcharges, the liability for which accrued  
28 prior to January 1, 2016.

29 (b) The making of any refunds and the effecting of any credits  
30 *for payments made on claims of liability that accrued prior to*  
31 *January 1, 2016.*

32 (c) The disposition of money collected *on any liability that*  
33 *accrued prior to January 1, 2016.*

34 (d) The commencement of any action or proceeding pursuant  
35 ~~to this part.~~ *the Public Utilities Act (Part 1 (commencing with*  
36 *Section 201) of Division 1 of the Public Utilities Code).*

37 ~~SEC. 15.~~

38 *SEC. 10.* No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

7 ~~SEC. 16.~~

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

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