

AMENDED IN SENATE JULY 2, 2014
AMENDED IN ASSEMBLY MAY 28, 2014
AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1717

Introduced by Assembly Member Perea

February 13, 2014

An act to ~~amend~~ *amend, repeal, and add* Sections 224.4 and 431 of, and to add *and repeal* Section 319 ~~to, of,~~ the Public Utilities Code, and to amend ~~Sections~~ *Section 41020 and of, and to amend, repeal, and add* Section 41030 of, to add *and repeal* Section 41033 of, and to add and *repeal* Part 21 (commencing with Section 42001) and Part 21.1 (commencing with Section 42100) of Division 2 ~~to, and to add and~~ *repeal* Section 41033 of, 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~~. *Law, unless the seller is a direct seller, as defined.* 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. *If the seller is a direct seller, it would be required to remit the PUC surcharges to the commission, the emergency telephone users surcharge to the board, and the local charges to the local jurisdiction or agency.* 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 that~~ *would*, beginning with the ~~calendar 2016-17 fiscal year beginning January 1, 2016, and ending with an unspecified calendar year, not less than \$9,900,000 be paid to the Prepaid MTS 911 Account for each calendar year for prepaid mobile telephony services and that any deficiency in payment to the Prepaid MTS 911 Account, below this amount, resulting from retail transactions by sellers during each calendar year would be the responsibility of prepaid MTS providers.~~ *the 2018-19 fiscal year, require the board to calculate the net amounts collected pursuant to the MTS surcharge for the emergency telephone users surcharge during each fiscal year and to provide notification on its Internet Web site by December 15 following each fiscal year, whether the amount exceeds or is less than \$9,900,000. The bill would provide that if for any fiscal year the amount collected is less than \$9,900,000, the deficiency is the responsibility, on a pro rata basis, of each prepaid MTS provider based on each provider's share of total California intrastate prepaid mobile telephony service revenues as reported to the commission. The bill would require the commission to provide the board with information relative to each prepaid MTS provider's revenue and percentage sales upon request and authorize the board to enforce the obligation of each prepaid MTS provider by serving a notice in a prescribed manner.*

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, 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, 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, 2020.*

(3)

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

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

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

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

(4)

(5) 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,
25 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal
26 Regulations.

27 (d) “Mobile telephony service” means commercially available
28 interconnected mobile phone services that provide voice
29 communication access to the public switched telephone network
30 (PSTN), or a successor network, by way of mobile communication
31 devices employing radiowave technology to transmit calls,
32 including cellular radiotelephone, broadband Personal
33 Communications Services (PCS), digital Specialized Mobile Radio
34 (SMR), or another radio band licensed by the Federal
35 Communications Commission. “Mobile telephony services” does

1 not include mobile satellite telephone services or mobile data
2 services used exclusively for the delivery of nonvoice information
3 to a mobile device.

4 (e) *This section shall remain in effect only until January 1, 2020,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2020, deletes or extends that date.*

7 SEC. 2. *Section 224.4 is added to the Public Utilities Code, to*
8 *read:*

9 224.4. (a) *“Mobile data service” means the delivery of*
10 *nonvoice information to a mobile device and includes nonvoice*
11 *information communicated to a mobile telephony services handset,*
12 *nonvoice information communicated to handheld personal digital*
13 *assistant (PDA) devices and laptop computers, and mobile paging*
14 *service carriers offering services on pagers and two-way messaging*
15 *devices. Unless specified, “mobile data service” does not include*
16 *nonvoice information communicated through a wireless local area*
17 *network operating in the unlicensed radio bands, commonly known*
18 *as a “Wi-Fi” network.*

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

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

28 (d) *“Mobile telephony service” means commercially available*
29 *interconnected mobile phone services that provide access to the*
30 *public switched telephone network (PSTN), or a successor network,*
31 *via mobile communication devices employing radiowave*
32 *technology to transmit calls, including cellular radiotelephone,*
33 *broadband Personal Communications Services (PCS), and digital*
34 *Specialized Mobile Radio (SMR). “Mobile telephony service” does*
35 *not include mobile satellite telephone services or mobile data*
36 *services used exclusively for the delivery of nonvoice information*
37 *to a mobile device.*

38 (e) *This section shall become operative on January 1, 2020.*

1 ~~SEC. 2.~~

2 SEC. 3. Section 319 is added to the Public Utilities Code, to
3 read:

4 319. (a) The commission shall annually, on or before October
5 1 of each year, commencing October 1, 2015, compute a
6 reimbursement fee as a percentage of the sales price for prepaid
7 mobile telephony services, to be effective on January 1 of the
8 following year and to be collected and remitted pursuant to the
9 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
10 21 (commencing with Section 42001) of Division 2 of the Revenue
11 and Taxation Code). On or before October 8 of each year,
12 commencing October 8, 2015, the commission shall post notice
13 of the reimbursement fee on its Internet Web site and notify both
14 the Office of Emergency Services and the State Board of
15 Equalization of this information as well as the computation method
16 used to determine the reimbursement fee.

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

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

36 (2) In annually computing reimbursement fees and universal
37 service surcharges to be collected and remitted to the commission
38 pursuant to this section, the commission shall adjust the fees and
39 surcharges to account for any past overcollection of fees or
40 surcharges from prepaid mobile telephony service customers

1 resulting from a reduction in fees or surcharges made subsequent
2 to December 31 of the previous year.

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

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

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

22 (6) At least 30 days prior to adopting any adjustment to a
23 reimbursement fee or universal service surcharge to be collected
24 and remitted to the commission on both postpaid and prepaid
25 intrastate service, the commission shall prepare a resolution or
26 other public document proposing the fee or surcharge adjustment
27 and explaining the calculation of the fee or surcharge. The
28 commission shall make the resolution or other public document
29 available to the public and on the commission's Internet Web site
30 and it shall include all of the following:

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

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

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

39 (d) The commission shall have enforcement authority to ensure
40 the proper remittances over retail ~~transactions~~, *transactions of a*

1 *prepaid MTS provider* pursuant to the Prepaid Mobile Telephony
2 Services Surcharge Collection Act (Part 21 (commencing with
3 Section 42001) of Division 2 of the Revenue and Taxation ~~Code~~;
4 ~~where the prepaid mobile telephony services (prepaid MTS)~~
5 ~~provider is also the seller. Code~~). For purposes of this section,
6 “prepaid MTS provider” has the same meaning as defined in
7 Section 42004 of the Revenue and Taxation Code. The commission
8 shall collaborate with the State Board of Equalization in exercising
9 its enforcement authority pursuant to this subdivision.

10 (e) (1) ~~Carriers providing prepaid mobile telephony service A~~
11 *prepaid MTS provider* shall remit to the commission the fee
12 established for telephone corporations pursuant to subdivision (a)
13 of Section 431 on the intrastate portion of the revenues received
14 for prepaid mobile telephony service through December 31, 2015.

15 (2) ~~Carriers providing prepaid mobile telephony service A~~
16 *prepaid MTS provider* shall remit to the commission the
17 telecommunications universal service surcharges established for
18 telephone corporations on the intrastate portion of the revenues
19 received for prepaid mobile telephony service through December
20 31, 2015.

21 (f) (1) This section does not relieve ~~carriers providing prepaid~~
22 ~~mobile telephony service a prepaid MTS provider~~ of their
23 continuing obligation to report prepaid mobile telephony service
24 revenues to the commission in a manner prescribed by the
25 commission.

26 (2) When reporting prepaid mobile telephony service revenues
27 to the commission, ~~carriers providing prepaid mobile telephony~~
28 ~~service a prepaid MTS provider~~ shall report the intrastate revenue
29 portion subject to the reimbursement fee and the
30 telecommunications universal service surcharges, as well as total
31 state wireless revenue.

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

34 (g) *This section shall remain in effect only until January 1, 2020,*
35 *and as of that date is repealed, unless a later enacted statute, that*
36 *is enacted before January 1, 2020, deletes or extends that date.*

37 ~~SEC. 3.~~

38 *SEC. 4.* Section 431 of the Public Utilities Code is amended
39 to read:

1 431. (a) The commission shall annually determine a fee to be
2 paid by every electrical, gas, telephone, telegraph, water, sewer
3 system, and heat corporation and every other public utility
4 providing service directly to customers or subscribers and subject
5 to the jurisdiction of the commission other than a railroad, except
6 as otherwise provided in Article 2 (commencing with Section 421),
7 for common carriers and related businesses, and as otherwise
8 provided in Section 319, for prepaid mobile telephony service
9 providers.

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

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

21 (d) *This section shall remain in effect only until January 1, 2020,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before January 1, 2020, deletes or extends that date.*

24 SEC. 5. *Section 431 is added to the Public Utilities Code, to*
25 *read:*

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

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

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

3 (d) *On and after January 1, 1985, this article shall apply to*
 4 *radiotelephone utilities as defined in Section 4902 as those*
 5 *provisions read on December 31, 1984.*

6 (e) *This section shall become operative on January 1, 2020.*

7 ~~SEC. 4.~~

8 SEC. 6. Section 41020 of the Revenue and Taxation Code is
 9 amended to read:

10 41020. (a) A surcharge is hereby imposed on amounts paid
 11 by every person in the state for both of the following:

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

13 (B) Notwithstanding subparagraph (A), on and after January 1,
 14 2016, *and before January 1, 2020*, in lieu of the surcharge imposed
 15 under subparagraph (A), a surcharge shall be imposed on amounts
 16 paid for prepaid mobile telephony services pursuant to the Prepaid
 17 Mobile Telephony Services Surcharge Collection Act (Part 21
 18 (commencing with Section 42001)).

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

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

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

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

33 (C) For VoIP service only, the VoIP safe harbor factor
 34 established by the FCC to be used to calculate the service supplier’s
 35 contribution to the federal Universal Service Fund. The FCC safe
 36 harbor factor in effect for VoIP service on September 1 of each
 37 year shall apply for the period of January 1 to December 31,
 38 inclusive, of the next succeeding calendar year for purposes of this
 39 method. At the time the FCC establishes a safe harbor factor for
 40 the federal Universal Service Fund for VoIP service that is greater

1 than 75 percent for interstate revenue or abolishes the safe harbor
2 factor applicable to VoIP service, this method shall become void
3 and of no effect, in which case a VoIP service supplier may use
4 an alternative method approved in advance by the board, which
5 shall be available to all VoIP service suppliers. The FCC safe
6 harbor factor applicable to VoIP service, as described in this
7 subparagraph, is used solely as a mechanism to calculate the
8 charges not subject to the surcharge for VoIP service and is not
9 necessarily reflective of the intrastate portion of VoIP service. The
10 use of the FCC safe harbor factor authorized by this subdivision
11 shall not be interpreted to permit application of any intrastate
12 requirement, other than the surcharge imposed under this part,
13 upon VoIP service suppliers.

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

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

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

29 (c) The surcharge imposed shall be at the rate of one-half of 1
30 percent of the charges made for the services to and including
31 November 1, 1982, and thereafter at a rate fixed pursuant to Article
32 2 (commencing with Section 41030).

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

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

37 (1) In accordance with the Mobile Telecommunications Sourcing
38 Act (Public Law 106-252), which is incorporated herein by
39 reference, to any charges for mobile telecommunications services
40 billed to a customer where those services are provided, or deemed

1 provided, to a customer whose place of primary use is outside this
2 state. Mobile telecommunications services shall be deemed
3 provided by a customer's home service provider to the customer
4 if those services are provided in a taxing jurisdiction to the
5 customer, and the charges for those services are billed by or for
6 the customer's home service provider.

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

10 (f) For purposes of this section:

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

20 (2) "Customer" means (A) the person or entity that contracts
21 with the home service provider for mobile telecommunications
22 services, or with a VoIP service provider for VoIP service, or (B)
23 if the end user of mobile telecommunications services or VoIP
24 service is not the contracting party, the end user of the mobile
25 telecommunications service or VoIP service. This paragraph applies
26 only for the purpose of determining the place of primary use. The
27 term "customer" does not include (A) a reseller of mobile
28 telecommunications service or VoIP communication service, or
29 (B) a serving carrier under an arrangement to serve the mobile
30 customer outside the home service provider's licensed service
31 area.

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

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

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

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

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

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

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

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

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

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

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

31 (11) “Prepaid mobile telephony services” has the same meaning
32 as in subdivision ~~(j)~~ (k) of Section 42004.

33 ~~SEC. 5.~~

34 *SEC. 7.* Section 41030 of the Revenue and Taxation Code is
35 amended to read:

36 41030. (a) The Office of Emergency Services shall determine
37 annually, on or before October 1, to be effective on January 1 of
38 the following year, a surcharge pursuant to subdivision (b) that it
39 estimates will produce sufficient revenue to fund the current fiscal
40 year’s 911 costs.

1 (b) (1) Commencing with the calculation made on October 1,
2 2014, the surcharge rate shall be determined by dividing the costs
3 (including incremental costs) the Office of Emergency Services
4 estimates for the current fiscal year of 911 ~~plans~~ costs approved
5 pursuant to ~~Section 53115~~ Article 6 (commencing with Section
6 53100) of Chapter 1 of Part 1 of Division 2 of Title 3 of the
7 Government Code, less the available balance in the State
8 Emergency Telephone Number Account in the General Fund, by
9 its estimate of the charges for intrastate telephone communications
10 services and VoIP service to which the surcharge will apply for
11 the period of January 1, 2015, to December 31, 2015, inclusive,
12 but in no event shall the surcharge rate in any year be greater than
13 three-quarters of 1 percent or less than one-half of 1 percent.

14 (2) Commencing with the calculation made October 1, 2015,
15 to be effective January 1, 2016, the surcharge shall be determined
16 by dividing the costs (including incremental costs) the Office of
17 Emergency Services estimates for the current fiscal year of 911
18 ~~plans~~ costs approved pursuant to ~~Section 53115~~ Article 6
19 (commencing with Section 53100) of Chapter 1 of Part 1 of
20 Division 2 of Title 3 of the Government Code, less the available
21 balance in the State Emergency Telephone Number Account in
22 the General Fund, by its estimate of the charges for intrastate
23 telephone communications services, the intrastate portion of
24 prepaid mobile telephony services, and VoIP service to which the
25 surcharge will apply for the period of January 1 to December 31,
26 inclusive, of the next succeeding calendar year, but in no event
27 shall the surcharge rate in any year be greater than three-quarters
28 of 1 percent or less than one-half of 1 percent. In making its
29 computation of the charges that are applicable to the intrastate
30 portion of prepaid mobile telephony services, the Office of
31 Emergency Services shall use the computation method developed
32 by the Public Utilities Commission and reported to the Office of
33 Emergency Services pursuant to subdivisions (a) and (b) of Section
34 319 of the Public Utilities Code.

35 (c) *When determining the surcharge rates pursuant to this*
36 *section, the office shall include the costs it expects to incur to plan,*
37 *test, implement, and operate Next Generation 911 technology and*
38 *services, including text to 911 service.*

39 (e)

1 (d) The Office of Emergency Services shall notify the board of
2 the surcharge amount collected pursuant to this part and the
3 surcharge amount applicable to prepaid mobile telephony services
4 by October 15 of each year.

5 ~~(d)~~

6 (e) At least 30 days prior to determining the surcharge pursuant
7 to subdivision (a), the Office of Emergency Services shall prepare
8 a summary of the calculation of the proposed surcharge and make
9 it available to the public and on its Internet Web site. The summary
10 shall contain all of the following:

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

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

15 (3) The rationale for adjustment to the surcharge determined
16 pursuant to subdivision (b), including, but not limited to, all
17 impacts from the surcharge collected pursuant to Part 21
18 (commencing with Section 42001).

19 (f) *This section shall remain in effect only until January 1, 2020,*
20 *and as of that date is repealed, unless a later enacted statute, that*
21 *is enacted before January 1, 2020, deletes or extends that date.*

22 SEC. 8. *Section 41030 is added to the Revenue and Taxation*
23 *Code, to read:*

24 41030. (a) *The Office of Emergency Services shall determine*
25 *annually, on or before October 1, a surcharge rate that it estimates*
26 *will produce sufficient revenue to fund the current fiscal year's*
27 *911 costs. The surcharge rate shall be determined by dividing the*
28 *costs (including incremental costs) the Office of Emergency*
29 *Services estimates for the current fiscal year of 911 plans approved*
30 *pursuant to Section 53115 of the Government Code, less the*
31 *available balance in the State Emergency Telephone Number*
32 *Account in the General Fund, by its estimate of the charges for*
33 *intrastate telephone communications services and VoIP service*
34 *to which the surcharge will apply for the period of January 1 to*
35 *December 31, inclusive, of the next succeeding calendar year; but*
36 *in no event shall such surcharge rate in any year be greater than*
37 *three-quarters of 1 percent nor less than one-half of 1 percent.*

38 (b) *This section shall become operative on January 1, 2020.*

1 ~~SEC. 6.~~

2 *SEC. 9.* Section 41033 is added to the Revenue and Taxation
3 Code, to read:

4 41033. (a) For purposes of this section, the following terms
5 have the following meanings:

6 (1) “Prepaid mobile telephony services” has the same meaning
7 as defined in Section 42004.

8 (2) “Prepaid MTS provider” has the same meaning as defined
9 in Section 42004.

10 (3) “Prepaid MTS 911 Account” means the Prepaid MTS 911
11 Account created in the Prepaid Mobile Telephony Services
12 Surcharge Fund pursuant to Section 42023.

13 (4) “Retail transaction” has the same meaning as defined in
14 Section 42004.

15 (5) “Seller” has the same meaning as defined in Section 42004.

16 ~~(b) Beginning with the calendar year beginning January 1, 2016,~~
17 ~~and ending with the calendar year ending December 31, _____, not~~
18 ~~less than nine million nine hundred thousand dollars (\$9,900,000)~~
19 ~~shall be paid to the Prepaid MTS 911 Account for each calendar~~
20 ~~year for prepaid mobile telephony services. Any deficiency in~~
21 ~~payment to the Prepaid MTS 911 Account, below this amount,~~
22 ~~resulting from retail transactions by sellers during each calendar~~
23 ~~year, shall be the responsibility of prepaid MTS providers.~~

24 ~~(c) On November 15, 2017, and by November 15 of each year~~
25 ~~thereafter, the board shall determine whether nine million~~
26 ~~nine hundred thousand dollars (\$9,900,000) was paid to the Prepaid~~
27 ~~MTS 911 Account pursuant to Section 42023, for retail transactions~~
28 ~~occurring during the previous calendar year. If in any calendar~~
29 ~~year~~

30 *(b) (1) For each fiscal year, beginning with the 2016–17 fiscal*
31 *year and ending with the 2018–19 fiscal year, the board shall*
32 *calculate the following on or before the November 1 following the*
33 *end of that fiscal year:*

34 *(A) The total collections for the fiscal year of that portion of*
35 *the prepaid MTS surcharge that is for the emergency telephone*
36 *users surcharge, net of any amounts that a seller was permitted*
37 *to deduct and retain pursuant to subdivision (e) of Section 42010.*

38 *(B) Less the expenses incurred and reimbursed to the board for*
39 *the fiscal year from that portion of the prepaid MTS surcharge*

1 *that is for the emergency telephone users surcharge pursuant to*
2 *subdivision (e) of Section 42020.*

3 *(2) The board shall provide notification of whether the amount*
4 *calculated in this section exceeds or is less than nine million nine*
5 *hundred thousand dollars (\$9,900,000) on its Internet Web site by*
6 *December 15 following the calculation, along with the underlying*
7 *calculations, assumptions, and methodology.*

8 *(c) If for any fiscal year the calculation performed pursuant to*
9 *subdivision (b) results in an amount less than nine million*
10 ~~*nine hundred nine hundred thousand dollars (\$9,900,000) was*~~
11 ~~*paid to the Prepaid MTS 911 Account, the (\$9,900,000), the*~~
12 ~~*deficiency shall be the responsibility, on a pro rata basis of each*~~
13 ~~*prepaid MTS provider, as provided in this subdivision. The board*~~
14 ~~*shall calculate the deficiency and bill each prepaid MTS provider*~~
15 ~~*its pro rata share of that deficiency. A deficiency based upon each*~~
16 ~~*prepaid MTS provider's pro rata share shall be calculated based*~~
17 ~~*upon each provider's percentage share of total California intrastate*~~
18 ~~*prepaid mobile telephony services revenue. revenues, as reported*~~
19 ~~*to the Public Utilities Commission pursuant to Section 319 of the*~~
20 ~~*Public Utilities Code for the prior fiscal year.*~~

21 ~~*(d) A prepaid MTS provider shall remit the amount billed to it*~~
22 ~~*pursuant to subdivision (c) to the board and the board shall deposit*~~
23 ~~*all amounts remitted to the Prepaid MTS 911 Account.*~~

24 *(d) The Public Utilities Commission, within 45 days of request,*
25 *shall provide the board the name and address of each prepaid*
26 *MTS provider and each prepaid MTS provider's California*
27 *intrastate prepaid mobile telephone services revenue, along with*
28 *the provider's percentage share of total California intrastate*
29 *prepaid mobile telephony services revenue for the prior fiscal year,*
30 *and any other information the board deems necessary.*

31 *(e) The obligation of each prepaid MTS provider shall be*
32 *enforced by serving a notice in the manner prescribed for service*
33 *of a notice of a deficiency determination, not later than three years*
34 *after the date the board determines that the calculation performed*
35 *pursuant to subdivision (b) results in a deficiency for the previous*
36 *fiscal year. Notwithstanding any provisions to the contrary in this*
37 *part, a petition for a redetermination of a notice issued pursuant*
38 *to this subdivision may be filed within 60 days after service upon*
39 *the person of notice thereof. Solely for purposes of a notice issued*
40 *pursuant to this subdivision, interest shall begin to accrue at the*

1 *expiration of the 60-day period. If a petition for redetermination*
 2 *is not filed within the 60-day period, the determination becomes*
 3 *final at the expiration of that period. All determinations made by*
 4 *the board under this section are due and payable at the time they*
 5 *become final. If they are not paid when due and payable, a penalty*
 6 *of 10 percent of the amount of the determination, exclusive of*
 7 *interest and penalties, shall be added thereto. Interest shall apply*
 8 *in accordance with Article 6 (commencing with Section 41095).*
 9 *The liability imposed by this section shall be collected by the board*
 10 *in accordance with the provisions of this part.*

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

15 ~~SEC. 7.~~
 16 SEC. 10. Part 21 (commencing with Section 42001) is added
 17 to Division 2 of the Revenue and Taxation Code, to read:

18
 19 PART 21. PREPAID MOBILE TELEPHONY SERVICES
 20 SURCHARGE COLLECTION ACT

21
 22 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

23
 24 42001. This part shall be known, and may be cited, as the
 25 Prepaid Mobile Telephony Services Surcharge Collection Act.

26 42002. The Legislature finds and declares all of the following:

27 (a) 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 benefits all persons with access to the
 31 telecommunications system.

32 (b) 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 communications taxes,
 36 fees, and surcharges on various types of communication service
 37 revenues, as provided by existing state or local law.

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

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

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

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

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

21 42004. For purposes of this part, the following terms have the
22 following meanings:

23 (a) "Board" means the State Board of Equalization.

24 (b) (1) *"Direct seller" means a prepaid MTS provider or*
25 *service supplier, as defined in Section 41007, that makes a sale of*
26 *prepaid mobile telephony services directly to a prepaid consumer*
27 *for any purpose other than resale in the regular course of business.*
28 *A direct seller includes, but is not limited, to any of the following:*

29 (A) *A telephone corporation, as defined by Section 234 of the*
30 *Public Utilities Code.*

31 (B) *An interconnected Voice over Internet Protocol (VoIP)*
32 *service, as defined in Section 285 of the Public Utilities Code.*

33 (C) *A retailer, as defined by Section 6203, that is a member of*
34 *the same commonly controlled group, as defined in Section 25105,*
35 *or that is a member of the same combined reporting group, as*
36 *defined in paragraph (3) of subdivision (b) of Section 25106.5 of*
37 *Title 18 of the California Code of Regulations, as an entity*
38 *described in subparagraph (A) or (B).*

39 (D) *A retailer, as defined by Section 6203, that sells prepaid*
40 *mobile telephony services to a prepaid consumer pursuant to an*

1 *exclusive contract with a telephone corporation, as defined in*
2 *Section 234 of the Public Utilities Code, where the retailer*
3 *activates the prepaid wireless mobile telephony service at the*
4 *point-of-sale for the consumer.*

5 (2) *For purposes of this subdivision, “sale” means any transfer*
6 *of title, possession, exchange, or barter, conditional or otherwise.*

7 ~~(b)~~

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

12 ~~(e)~~

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

16 ~~(d)~~

17 (e) *“Local charges” means those charges described in*
18 *subdivision (a) of Section 42101.*

19 ~~(e)~~

20 (f) *“Local jurisdiction” or “local agency” means a city, county,*
21 *or city and county, which includes a charter city, county, or city*
22 *and county.*

23 ~~(f)~~

24 (g) *“Mobile data service” has the same meaning as defined in*
25 *Section 224.4 of the Public Utilities Code.*

26 ~~(g)~~

27 (h) *“Mobile telephony service” or “MTS” has the same meaning*
28 *as defined in Section 224.4 of the Public Utilities Code.*

29 ~~(h)~~

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

37 ~~(i)~~

38 (j) *“Prepaid consumer” or “consumer” means a person who*
39 *purchases prepaid mobile telephony services in a retail transaction.*

40 ~~(j)~~

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

11 ~~(k)~~
12 (l) “Prepaid MTS provider” means a ~~person telephone~~
13 ~~corporation, pursuant to Section 234 of the Public Utilities Code,~~
14 ~~that provides prepaid mobile telephony services pursuant to a~~
15 ~~license issued by the Federal Communications Commission.~~
16 ~~services.~~

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

23 ~~(m)~~
24 (n) “Public Utilities Commission surcharges” means surcharges
25 authorized by the Public Utilities Commission to be billed and
26 collected from end-use consumers of wireless communications
27 services, and of which the commission provides the board with
28 notice pursuant to Section 319 of the Public Utilities Code,
29 including:

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

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

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

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

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

3 (6) The Moore Universal Telephone Service Act (Article 8
4 (commencing with Section 871) of Chapter 4 of Part 1 of Division
5 1 of the Public Utilities Code).

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

9 ~~(n)~~

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

16 ~~(o)~~

17 (p) “Seller” means a person that sells prepaid mobile telephony
18 service to a person in a retail transaction.

19

20 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES
21 SURCHARGE

22

23 42010. (a) (1) On and after January 1, 2016, a prepaid MTS
24 surcharge shall be imposed on each prepaid consumer and shall
25 be collected by a seller from each prepaid consumer at the time of
26 each retail transaction in this state. The prepaid MTS surcharge
27 shall be imposed as a percentage of the sales price of each retail
28 transaction that occurs in this state.

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

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

37 (1) The surcharge rate reported pursuant to subdivision (c) of
38 Section 41030.

39 (2) The Public Utilities Commission’s reimbursement fee and
40 telecommunications universal service surcharges, established by

1 the Public Utilities Commission pursuant to subdivisions (a) and
2 (b) of Section 319 of the Public Utilities Code.

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

10 (2) Notwithstanding paragraph (1), if a local agency notifies
11 the board pursuant to subdivision (d) of Section 42101.5 that the
12 posted rate is inaccurate or it no longer imposes a local charge or
13 local charges or that the rate of its local charge or local charges
14 has decreased, the board shall promptly post a recalculated rate
15 that is applicable to the jurisdiction of that local agency. The
16 change shall become operative on the first day of the calendar
17 quarter commencing more than 60 days from the date the local
18 agency notifies the board of the inaccuracy or that it no longer
19 imposes a local charge or that the rate of its local charge has
20 decreased. Nothing in this section modifies the notice obligations
21 of Section 799 of the Public Utilities Code. However, beginning
22 January 1, 2016, the notification and implementation requirements
23 of paragraphs (5) and (6) of subdivision (a) of Section 799 of the
24 Public Utilities Code shall not apply to prepaid mobile telephony
25 services.

26 (3) A seller collecting the prepaid MTS surcharge and local
27 charges pursuant to this part and Part 21.1 (commencing with
28 Section 42100) may rely upon the accuracy of the information
29 posted on the board's Internet Web site in collecting the state
30 surcharge and local charges.

31 (d) (1) Except for amounts retained pursuant to subdivision (e),
32 *and except as provided in subdivision (f) for a seller that is a direct*
33 *seller*, all amounts of the prepaid MTS surcharge and local charges
34 collected by sellers shall be remitted to the board pursuant to
35 Chapter 3 (commencing with Section 42020).

36 (2) A seller that is authorized to provide lifeline service under
37 the state lifeline program or federal lifeline program, that sells
38 prepaid mobile telephony services directly to the prepaid customer,
39 shall remit the prepaid MTS surcharge to the board, less any

1 applicable exemption from the surcharge that is applicable to the
2 retail transaction pursuant to Section 42012.

3 (e) A seller *that is not a prepaid MTS provider* shall be permitted
4 to deduct and retain an amount equal to 2 percent of the amounts
5 that are collected by the seller from prepaid consumers for the
6 prepaid MTS surcharge and local charges, ~~except in a retail~~
7 ~~transaction that involves both on a pro rata basis, according to~~
8 ~~that portion of the revenues collected by the seller for each of the~~
9 following:

10 ~~(1) The seller is the provider of prepaid mobile telephony~~
11 ~~services pursuant to Section 224.4 of the Public Utilities Code, or~~
12 ~~a telephone corporation pursuant to Section 234 of the Public~~
13 ~~Utilities Code.~~

14 ~~(2) The seller sells the prepaid mobile telephony services directly~~
15 ~~to the prepaid consumer.~~

16 (1) *The emergency telephone users surcharge.*

17 (2) *The Public Utilities Commission surcharges.*

18 (3) *Local charges.*

19 (f) (1) *A direct seller shall remit that portion of the prepaid*
20 *MTS surcharge that consists of the Public Utilities Commission*
21 *surcharges directly to the commission, and not to the board, for*
22 *those retail transactions with a prepaid consumer in the state. The*
23 *seller that is a telephone corporation shall remit the Public Utilities*
24 *Commission surcharges with those reports required by the*
25 *commission.*

26 (2) *A direct seller shall remit that portion of the prepaid MTS*
27 *surcharge that consists of the emergency telephone users surcharge*
28 *to the board pursuant to the Emergency Telephone Users*
29 *Surcharge Act (Part 20 (commencing with Section 41001)) for*
30 *those retail transactions with a prepaid consumer in the state.*

31 (3) *A direct seller shall remit that portion of the prepaid MTS*
32 *surcharge that is for local charges, if applicable, to the local*
33 *jurisdiction or local agency imposing the local charge.*

34 ~~(f)~~

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

1 ~~(g)~~

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

16 ~~(h)~~

17 (i) 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)~~

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

1 to enforce the collection of the surcharge or local charge imposed
2 by this section.

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

12 (j)

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

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

29 42012. (a) For purposes of this section, “state lifeline program”
30 means the program furnishing lifeline voice communication service
31 pursuant to the Moore Universal Telephone Service Act (Article
32 8 (commencing with Section 871) of Chapter 4 of Part 1 of
33 Division 1 of the Public Utilities Code).

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

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

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

3 (3) The exemption is applied only to the amount paid for the
4 portion of the prepaid mobile telephony service that the lifeline
5 program specifies is exempt from the surcharges and fees that
6 comprise the prepaid MTS surcharge.

7 42014. (a) For purposes of this part, a retail transaction occurs
8 in the state under any of the following circumstances:

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

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

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

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

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

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

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

33 (2) If the retail transaction is a known-address transaction, the
34 location shall be as determined in descending order beginning with
35 subparagraph (A) of paragraph (2) of subdivision (a); if
36 subparagraph (A) of that paragraph is inapplicable, then pursuant
37 to subparagraph (B) of that paragraph; if both subparagraphs (A)
38 and (B) of that paragraph are inapplicable, then subparagraph (C)
39 of that paragraph; and if subparagraphs (A), (B), and (C) of that
40 paragraph are inapplicable, then subparagraph (D) of that

1 paragraph. In a known address transaction, the consumption of,
2 use of, or access to, the prepaid mobile telephony service shall be
3 presumed to be at the known address.

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

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

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

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

1 (c) If a minimal amount of prepaid mobile telephony service is
 2 sold for a single, nonitemized price with a mobile telephony service
 3 communications device, the seller shall not apply the prepaid MTS
 4 surcharge or local charges to the transaction. For these purposes,
 5 a service allotment denominated as 10 minutes or less, or five
 6 dollars (\$5) or less, is a minimal amount.

7
 8 CHAPTER 3. ADMINISTRATION
 9

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

19 (2) Notwithstanding Article 1.1 (commencing with Section
 20 55050) of Chapter 3 of Part 30, any person required, or that elects,
 21 to remit amounts due under Part 1 (commencing with Section
 22 6001) by electronic funds transfer pursuant to Article 1.2
 23 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall
 24 remit prepaid MTS surcharge amounts due under this section by
 25 electronic funds transfer.

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

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

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

3 (d) The board shall establish procedures for sharing of
4 information, other than information protected under Section 19542,
5 related to the collection of the prepaid MTS surcharge upon the
6 request of the Public Utilities Commission or the Office of
7 Emergency Services.

8 (e) The total combined annual expenses incurred for
9 administration and collection by the board pursuant to this part
10 and Part 21.1 (commencing with Section 42100) shall be allocated
11 by the board on a pro rata basis according to revenues collected
12 by the board for: (1) that portion of the prepaid MTS surcharge
13 that is for the emergency telephone users surcharge, (2) that portion
14 of the prepaid MTS surcharge that is for the Public Utilities
15 Commission surcharges, and (3) local charges.

16 42021. The board shall establish remittance schedules and
17 methods for payment of the prepaid MTS surcharge that utilize
18 existing methods established under the Sales and Use Tax Law
19 (Part 1 (commencing with Section 6001)), including all of the
20 following:

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

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

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

30 42022. Every seller shall register with the board. The board
31 shall establish a method for registration of sellers under this part
32 that utilizes the existing registration process for a seller's permit
33 established pursuant to Section 6066 of the Sales and Use Tax
34 Law (Part 1 (commencing with Section 6001)). Every application
35 for registration shall be made upon a form prescribed by the board
36 and shall set forth the name under which the applicant transacts
37 or intends to transact business, the location of its place or places
38 of business, and such other information as the board may require.
39 An application for registration shall be authenticated in a form or
40 pursuant to methods as may be prescribed by the board.

1 42023. (a) The Prepaid Mobile Telephony Services Surcharge
 2 Fund is hereby created in the State Treasury. The Prepaid MTS
 3 911 Account and the Prepaid MTS PUC Account are hereby
 4 created in the fund. The Prepaid Mobile Telephony Services
 5 Surcharge Fund shall consist of all surcharges, interest, penalties,
 6 and other amounts collected and paid to the board pursuant to this
 7 part, less payments of refunds and reimbursements to the board
 8 for expenses incurred in the administration and collection of the
 9 prepaid MTS surcharge.

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

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

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

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

26 *42024. This part shall remain in effect only until January 1,*
 27 *2020, and as of that date is repealed, unless a later enacted statute,*
 28 *that is enacted before January 1, 2020, deletes or extends that*
 29 *date.*

30 ~~SEC. 8.~~

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

33

34 PART 21.1. LOCAL PREPAID MOBILE TELEPHONY
 35 SERVICES COLLECTION ACT

36

37 42100. (a) This part shall be known and may be cited as the
 38 Local Prepaid Mobile Telephony Services Collection Act.

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

1 (1) Maintaining effective and efficient communications services,
2 911 emergency systems, communications-related public policy
3 programs to promote universal service, and various local programs
4 across the state benefit all persons with access to the
5 telecommunications system.

6 (2) Providers of end-use communications services, including
7 providers of mobile voice telecommunications services, which the
8 Federal Communications Commission terms mobile telephony
9 service, are required to collect and remit utility users taxes and
10 local 911 or access charges (local charges) imposed by over 150
11 cities and counties in California on end-users of such mobile
12 telephony services, as required by existing state or local law.

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

17 (4) Prepaid mobile telephony services are an important and
18 growing segment of the communications industry. Prepaid mobile
19 telephony services, unlike postpaid mobile telephony services, are
20 frequently sold by a third-party seller that is not the provider of
21 mobile telephony services, and collecting local charges from
22 prepaid consumers of mobile telephony services at the time of the
23 retail transaction is necessary and the most efficient and
24 competitively neutral means for the collection of those local
25 charges.

26 (5) The collection of prepaid mobile telephony services by
27 third-party sellers and the remittance of those local charges to the
28 board involves administrative costs and responsibilities that are
29 unique to prepaid mobile telephony services, and therefore justify
30 unique reimbursement and tax rate simplification measures, which
31 are fair and reasonable.

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

36 (d) It is the intention of the Legislature that this part shall
37 preempt the provisions pertaining to the tax or charge rate, base,
38 and method of collection contained in all local ordinances, rules,
39 or regulations concerning the imposition of a local charge upon
40 the consumption of prepaid mobile telephony services to the extent

1 those provisions are inconsistent with the provisions of this part
2 and Part 21 (commencing with Section 42001). It is not the intent
3 of the Legislature to otherwise preempt, limit, or affect the general
4 authority of local jurisdictions to impose a utility user tax, local
5 911 charge, or any other local charges.

6 42101. For purposes of this part, all of the following definitions
7 shall apply:

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

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

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

17 (d) “Board,” “local jurisdiction,” “mobile telephony service,”
18 “person,” “prepaid consumer,” “Prepaid mobile telephony service,”
19 “prepaid MTS provider,” and “prepaid MTS surcharge” have the
20 same meaning as those terms are defined in the Prepaid Mobile
21 Telephony Services Surcharge Collection Act (Part 21
22 (commencing with Section 42001)).

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

39 (b) In the event that a local agency adopts a new local charge
40 that is imposed on prepaid mobile telephony services after

1 September 1, 2015, the local agency shall enter into a contract
 2 with the board to perform the functions set forth in Section 42103,
 3 on or before December 1, with collection of the local charge to
 4 commence April 1 of the next calendar year. In the contract, the
 5 local agency shall certify to the board: (1) that its ordinance applies
 6 its local charge to prepaid mobile telephony services and that the
 7 local agency agrees to indemnify, and hold and save harmless, the
 8 board, its officers, agents, and employees for any and all liability
 9 for damages that may result from collection pursuant to the
 10 contract; and, (2) the amount of the local 911 charge, as set out in
 11 Section 42102.5, or the applicable tiered rate for a utility user tax,
 12 as set out in Section 42102.

13 (c) In the event that a local agency increases its local charge
 14 after September 1, 2015, the local agency shall provide the board
 15 with written notice of the increased local charge on or before
 16 December 1, with collection of the local charge to commence April
 17 1 of the next calendar year.

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

22 (e) Notwithstanding subdivision (a), through and including
 23 December 31, 2015, a prepaid MTS provider may elect to remit
 24 the local charge to the appropriate local taxing jurisdiction based
 25 on the applicable tax rate of Section 42102, Section 42102.5, or
 26 both, and those remittances shall be deemed to be in full
 27 compliance with the local ordinance imposing a local charge on
 28 prepaid mobile telephony service.

29 42102. (a) Notwithstanding any other law, on and after January
 30 1, 2016, the authority of a city, county, or city and county, which
 31 includes a charter city, county, or city and county, to impose a
 32 utility user tax on the consumption of prepaid mobile telephony
 33 service in the city, county, or city and county at the rate as specified
 34 in an ordinance authorized pursuant to Section 7284.2 or any other
 35 law is suspended, and the utility user tax rate to be applied instead
 36 during the period under any ordinance as so adopted is the
 37 applicable of the following:

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

1 or city and county at the rate of less than 1.5 percent, the rate shall
2 be 0 percent.

3 (2) In the case of a city, county, or city and county that has
4 adopted an ordinance to impose a utility user tax on the
5 consumption of prepaid communication services in the city, county,
6 or city and county at the rate of 1.5 percent or more but less than
7 2.5 percent, the rate shall be 1.5 percent.

8 (3) In the case of a city, county, or city and county that has
9 adopted an ordinance to impose a utility user tax on the
10 consumption of prepaid communication services in the city, county,
11 or city and county at the rate of 2.5 percent or more but less than
12 3.5 percent, the rate shall be 2.5 percent.

13 (4) In the case of a city, county, or city and county that has
14 adopted an ordinance to impose a utility user tax on the
15 consumption of prepaid communication services in the city, county,
16 or city and county at the rate of 3.5 percent or more but less than
17 4.5 percent, the rate shall be 3.5 percent.

18 (5) In the case of a city, county, or city and county that has
19 adopted an ordinance to impose a utility user tax on the
20 consumption of prepaid communication services in the city, county,
21 or city and county at the rate of 4.5 percent or more but less than
22 5.5 percent, the rate shall be 4.5 percent.

23 (6) In the case of a city, county, or city and county that has
24 adopted an ordinance to impose a utility user tax on the
25 consumption of prepaid communication services in the city, county,
26 or city and county at the rate of 5.5 percent or more but less than
27 6.5 percent, the rate shall be 5.5 percent.

28 (7) In the case of a city, county, or city and county that has
29 adopted an ordinance to impose a utility user tax on the
30 consumption of prepaid communication services in the city, county,
31 or city and county at the rate of 6.5 percent or more but less than
32 7.5 percent, the rate shall be 6.5 percent.

33 (8) In the case of a city, county, or city and county that has
34 adopted an ordinance to impose a utility user tax on the
35 consumption of prepaid communication services in the city, county,
36 or city and county at the rate of 7.5 percent or more but less than
37 9 percent, the rate shall be 7.5 percent.

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

1 or city and county at the rate of 9 percent or more, the rate shall
 2 be 9 percent.

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

10 (c) Notwithstanding subdivision (a), a city, county, or city and
 11 county may levy, increase, or extend a utility user tax at any rate
 12 on the consumption of communication services, including a utility
 13 user tax on the consumption of prepaid mobile telephony service,
 14 except that during the period on and after January 1, 2016, any
 15 utility user tax rate on prepaid mobile telephony service under any
 16 ordinance as so adopted shall be the applicable rate specified in
 17 subdivision (a).

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

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

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

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

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

29 (3) This part shall not 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 42102.5. (a) Notwithstanding any other law, on and after
 33 January 1, 2016, the authority of a city, county, or city and county,
 34 which includes a charter city, county, or city and county, to impose
 35 a charge, that applies to prepaid mobile telephony service, for
 36 access to communication services or access to local “911”
 37 emergency telephone systems in the city, county, or city and county
 38 at the rate as specified in an ordinance is suspended, and the rate
 39 to be applied instead during that period under any ordinance as so
 40 adopted is the applicable of the following:

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

8 (2) In the case of a city, county, or city and county that has
9 adopted an ordinance to impose a charge that applies to prepaid
10 mobile telephony service for access to communication services or
11 access to local “911” emergency telephone systems in the city,
12 county, or city and county at a specified percentage or at the rate
13 of one dollar (\$1) per month per access line, including any
14 adjustments for inflation, or more, the rate shall be the specified
15 percentage or the rate obtained by dividing the dollar amount by
16 50, rounded to the nearest one-tenth of 1 percent.

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

24 (c) Notwithstanding subdivision (a), a city, county, or city and
25 county may levy, increase, or extend a charge at any rate, that
26 applies to prepaid mobile telephony services, for access to
27 communication services or access to local “911” emergency
28 telephone systems in the city, county, or city and county, except
29 that during the period on and after January 1, 2016, any charge on
30 prepaid mobile telephony service under any ordinance as so
31 adopted shall be the applicable rate specified in subdivision (a).

32 42103. (a) The board shall perform all functions incident to
33 the collection of the local charges of a city, county, or a city and
34 county, and shall collect and administer the local charges in the
35 manner prescribed for the collection of the prepaid MTS surcharge
36 in the Prepaid Mobile Telephony Services Surcharge Collection
37 Act (Part 21 (commencing with Section 42001)), subject to the
38 limitations set forth in Section 42105. For purposes of this part,
39 the references in the Fee Collection Procedures Law to “fee” shall
40 include the local charge imposed by this part, and references to

1 “feepayer” shall include a person required to pay the local charge
2 imposed by this part, which includes the seller.

3 (b) All local charges collected by the board shall be deposited
4 in the Local Charges for Prepaid Mobile Telephony Services Fund
5 which is hereby created in the State Treasury, and shall be held in
6 trust for the local taxing jurisdiction, and shall not be used for any
7 other purpose. Local charges shall consist of all taxes, charges,
8 interest, penalties, and other amounts collected and paid to the
9 board, less payments for refunds and reimbursement to the board
10 for expenses incurred in the administration and collection of the
11 local charges. The board shall transmit the funds to the local
12 jurisdictions periodically as promptly as feasible. The transmittals
13 required under this section shall be made at least once in each
14 calendar quarter. The board shall furnish a quarterly statement
15 indicating the amounts paid and withheld for expenses of the board
16 and subject to subdivision (e) of Section 42020.

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

20 (d) The board’s audit duties under this part shall be limited to
21 verification that the seller complied with this part.

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

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

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

29 (3) To respond to requests from sellers, consumers, boards, and
30 others regarding issues pertaining to local charges that are within
31 the scope of the board’s duties.

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

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

37 (2) A third-party contract shall not provide, in whole or in part,
38 in any manner a contingent fee arrangement as payment for services
39 rendered. For purposes of this section, “contingent fee” includes,
40 but is not limited to, a fee that is based on a percentage of the tax

1 liability reported on a return, a fee that is based on a percentage
2 of the taxes owed, or a fee that depends on the specific tax result
3 attained.

4 42105. (a) The city, county, or city and county that has adopted
5 an ordinance to impose a local charge that applies to prepaid mobile
6 telephony service shall be solely responsible for:

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

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

11 (3) Responding to any claim for refund by a customer arising
12 under subdivision (b), (c), or (d). The claim shall be processed in
13 accordance with the provisions of the local enactment that allows
14 the claim to be filed.

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

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

24 (b) A consumer may rebut the presumed location of the retail
25 transaction to the city or county clerk of the local jurisdiction, as
26 provided in subdivision (b) of Section 42014, by filing a claim and
27 declaration under penalty of perjury on a form established by the
28 city or county clerk of the local jurisdiction indicating the actual
29 location of the retail sale. The claim shall be processed in
30 accordance with the provisions of the local enactment that allows
31 the claim to be filed.

32 (c) A consumer that is exempt from the local charge under the
33 local enactment may file a claim for a refund from the local
34 jurisdiction in accordance with the refund provisions of the local
35 enactment that allows the claim to be filed.

36 (d) In connection with any actions or claims relating to or arising
37 from the invalidity of a local tax ordinance, in whole or in part,
38 the seller shall not be liable to any consumer as a consequence of
39 collecting the tax. In the event a local jurisdiction is ordered to
40 refund the tax, it shall be the sole responsibility of the local

1 jurisdiction to refund the tax. In any action seeking to enjoin
2 collection of a local charge by a seller, in any action seeking
3 declaratory relief concerning a local charge, in any action seeking
4 a refund of a local charge, or in any action seeking to otherwise
5 invalidate a local charge, the sole necessary party defendant in the
6 action shall be the local jurisdiction on whose behalf the local
7 charge is collected, and the seller collecting the local charge shall
8 not be named as a party in the action. There shall be no recovery
9 from the state for the imposition of any unconstitutional or
10 otherwise invalid local charge that is collected pursuant to this
11 part.

12 42106. (a) For purposes of this section:

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

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

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

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

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

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

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

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

6 42107. The city, county, or city and county shall pay to the
7 board its costs of preparation to administer and collect local
8 charges. The city, county, or city and county shall pay costs
9 monthly as are incurred and billed by the board. The costs include
10 all preparatory costs, including costs of developing procedures,
11 programming for data processing, developing and adopting
12 appropriate regulations, designing and printing of forms,
13 developing instructions for the board's staff and for taxpayers, and
14 other necessary preparatory costs which shall include the board's
15 direct and indirect costs as specified by Section 11256 of the
16 Government Code. Any disputes as to the amount of preparatory
17 costs incurred shall be resolved by the Director of Finance, and
18 his or her decision shall be final.

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

23 42110. (a) Notwithstanding Section 55381, it is unlawful for
24 any person, other than an officer or employee of a county, city and
25 county, city, or district, who obtains access to information
26 contained in, or derived from, prepaid mobile telephony services
27 surcharge and local charge records of the board pursuant to
28 subdivision (b), to retain that information after that person's
29 contract with the county, city and county, city, or district has
30 expired.

31 (b) (1) When requested by resolution of the legislative body of
32 any county, city and county, city, or district, the board shall permit
33 any duly authorized officer or employee of the county, city and
34 county, city, or district, or other person designated by that
35 resolution, to examine all of the prepaid mobile telephony services
36 surcharge and local charge records of the board pertaining to the
37 ascertainment of those prepaid mobile telephony services surcharge
38 and local charges to be collected for the county, city and county,
39 city, or district by the board pursuant to contract entered into
40 between the board and the county, city and county, city, or district

1 pursuant to this part. Except as otherwise provided in this section,
 2 this subdivision does not allow any officer, employee, or other
 3 person authorized or designated by a county, city and county, city,
 4 or district to examine any sales or transactions and use tax records
 5 of any taxpayer. The costs that are incurred by the board in
 6 complying with a request made pursuant to this subdivision shall
 7 be deducted by the board from those revenues collected by the
 8 board on behalf of the county, city and county, city, or district
 9 making the request.

10 (2) The resolution of the legislative body of the county, city and
 11 county, city, or district shall certify that any person designated by
 12 the resolution, other than an officer or employee, meets all of the
 13 following conditions:

14 (A) Has an existing contract with the county, city and county,
 15 city, or district to examine those prepaid mobile telephony services
 16 surcharge and local charge records.

17 (B) Is required by that contract to disclose information contained
 18 in, or derived from, those prepaid mobile telephony services
 19 surcharge and local charge records only to an officer or employee
 20 of the county, city and county, city, or district who is authorized
 21 by the resolution to examine the information.

22 (C) Is prohibited by that contract from performing consulting
 23 services for a seller during the term of that contract.

24 (D) Is prohibited by that contract from retaining the information
 25 contained in, or derived from, those prepaid mobile telephony
 26 services surcharge and local charge records, after that contract has
 27 expired.

28 (3) Information obtained by examination of board records
 29 pursuant to this subdivision shall be used only for purposes related
 30 to the collection of the prepaid mobile telephony services surcharge
 31 and local charges by the board pursuant to the contract, or for
 32 purposes related to other governmental functions of the county,
 33 city and county, city, or district set forth in the resolution.

34 (c) If the board believes that any information obtained pursuant
 35 to subdivision (b) has been disclosed to any person not authorized
 36 or designated by the resolution of the legislative body of the county,
 37 city and county, city, or district, or has been used for purposes not
 38 permitted by subdivision (b), the board may impose conditions on
 39 access to its local charge records that the board considers
 40 reasonable, in order to protect the confidentiality of those records.

1 (d) Predecessors, successors, receivers, trustees, executors,
2 administrators, assignees, and guarantors, if directly interested,
3 may be given information as to the items included in the measure
4 and amounts of any unpaid local charges or amounts of local
5 charges required to be collected, interest, and penalties.

6 *42111. This part shall remain in effect only until January 1,*
7 *2020, and as of that date is repealed, unless a later enacted statute,*
8 *that is enacted before January 1, 2020, deletes or extends that*
9 *date.*

10 *SEC. 12. The repeal of any provision of Part 21 (commencing*
11 *with Section 42001), and Part 21.1 (commencing with Section*
12 *42100), of Division 2 of the Revenue and Taxation Code, shall not*
13 *affect the collection of the prepaid MTS surcharge, the liability of*
14 *which accrued prior to January 1, 2019, the making of any refunds*
15 *and effecting of any credits, the disposition of money collected,*
16 *nor shall the repeal affect any act done or any right accruing or*
17 *accrued, or any suit or proceeding had or commenced in any civil*
18 *cause, before that repeal; but all rights and liabilities under that*
19 *law shall continue, and may be enforced in the same manner, as*
20 *if the repeal had not been made.*

21 ~~SEC. 9.~~

22 *SEC. 13. No inference shall be drawn from the enactment of*
23 *this act with respect to any remittance requirements of a prepaid*
24 *MTS provider pursuant to the law as it existed prior to the*
25 *enactment of this act. Additionally, nothing in this act shall affect*
26 *any remittance requirements of a prepaid mobile telephony services*
27 *provider for any service other than prepaid mobile telephony*
28 *services. Nothing in this act shall affect the federal remittance*
29 *requirements of a prepaid mobile telephony services provider.*

30 ~~SEC. 10.~~

31 *SEC. 14. It is the intent of the Legislature that the remittance*
32 *obligations of a prepaid mobile telephony services provider,*
33 *relating to emergency telephone users surcharge and any charges*
34 *imposed by the Public Utilities Commission pursuant to Chapter*
35 *2.5 (commencing with Section 401) of Part 1 of Division 1 of the*
36 *Public Utilities Code or for purposes of the universal services*
37 *programs, shall remain applicable for each of the following:*

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

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

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

6 (d) The commencement of any action or proceeding pursuant
7 to the Public Utilities Act (Part 1 (commencing with Section 201)
8 of Division 1 of the Public Utilities Code).

9 ~~SEC. 11.~~

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

19 ~~SEC. 12.~~

20 *SEC. 16.* This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or safety within
22 the meaning of Article IV of the Constitution and shall go into
23 immediate effect. The facts constituting the necessity are:

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