

**Introduced by Committee on Governance and Finance (Senators Hertzberg (Chair), Bates, Beall, Hernandez, Lara, Nguyen, and Pavley)**

March 24, 2015

---

---

An act to amend Sections 41030, 41032, and 42010 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 802, as introduced, Committee on Governance and Finance. Emergency telephone user surcharge.

The 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, and requires the Office of Emergency Services to annually determine the surcharge rate. Commencing with the calculation made October 1, 2015, existing law requires the office to compute the charges applicable to the intrastate portion of prepaid mobile telephony services, as provided.

The Prepaid Mobile Telephony Service Surcharge Collection Act establishes 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, that is imposed in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act and specified Public Utility Commission surcharges. That act requires the prepaid MTS surcharge to be annually calculated by the State Board of Equalization by November 1 of each year, commencing November 1, 2015, by using the emergency telephone

user surcharge rate reported by the office and specified Public Utility Commission surcharges.

The Emergency Telephone Users Surcharge Act requires the office to notify the board of the emergency telephone user surcharge rate and the emergency telephone user surcharge rate applicable to prepaid mobile telephony services by October 15 of each year.

This bill would instead require the office to notify the board of the emergency telephone user surcharge rate by October 1.

The Emergency Telephone Users Surcharge Act requires, immediately upon notification by the office and fixing the surcharge rate, the board to notify by mail every registered service supplier of the new rate.

This bill would instead require the board to notify every registered service supplier of the new rate by means then available to it, including, but not limited to, mail, electronic mail, or Internet Web site postings.

This bill would make other technical, nonsubstantive changes.

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 41030 of the Revenue and Taxation Code,  
2 as amended by Chapter 926 of the Statutes of 2014, is amended  
3 to read:

4 41030. (a) The Office of Emergency Services shall determine  
5 annually, on or before October 1, to be effective on January 1 of  
6 the following year, a surcharge rate pursuant to subdivision (b)  
7 that it estimates will produce sufficient revenue to fund the current  
8 fiscal year's 911 costs.

9 (b) (1) The surcharge rate shall be determined by dividing the  
10 costs (including incremental costs) the Office of Emergency  
11 Services estimates for the current fiscal year of 911 costs approved  
12 pursuant to Article 6 (commencing with Section 53100) of Chapter  
13 1 of Part 1 of Division 2 of Title 5 of the Government Code, less  
14 the available balance in the State Emergency Telephone Number  
15 Account in the General Fund, by its estimate of the charges for  
16 intrastate telephone communications services and VoIP service to  
17 which the surcharge will apply for the period of January 1, 2015,  
18 to December 31, inclusive, of the next succeeding calendar year,

1 but in no event shall the surcharge rate in any year be greater than  
2 three-quarters of 1 percent nor less than one-half of 1 percent.

3 (2) Commencing with the calculation made October 1, 2015,  
4 to be effective January 1, 2016, the surcharge shall be determined  
5 by dividing the costs (including incremental costs) the Office of  
6 Emergency Services estimates for the current fiscal year of 911  
7 costs approved pursuant to Article 6 (commencing with Section  
8 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the  
9 Government Code, less the available balance in the State  
10 Emergency Telephone Number Account in the General Fund, by  
11 its estimate of the charges for intrastate telephone communications  
12 services, the intrastate portion of prepaid mobile telephony services,  
13 and VoIP service to which the surcharge will apply for the period  
14 of January 1 to December 31, inclusive, of the next succeeding  
15 calendar year, but in no event shall the surcharge rate in any year  
16 be greater than three-quarters of 1 percent or less than one-half of  
17 1 percent. In making its computation of the charges that are  
18 applicable to the intrastate portion of prepaid mobile telephony  
19 services, the Office of Emergency Services shall use the  
20 computation method developed by the Public Utilities Commission  
21 and reported to the Office of Emergency Services pursuant to  
22 subdivisions ~~(a)~~ and (b) and (c) of Section 319 of the Public  
23 Utilities Code.

24 (c) When determining the surcharge rates pursuant to this  
25 section, the office shall include the costs it expects to incur to plan,  
26 test, implement, and operate Next Generation 911 technology and  
27 services, including text to 911 service, consistent with the plan  
28 and timeline required by Section 53121 of the Government Code.

29 (d) The office shall notify the board of the surcharge rate  
30 *imposed under this part and* determined pursuant to this section  
31 *on or before October 1 of each year* and the surcharge rate  
32 applicable to prepaid mobile telephony services ~~by determined~~  
33 *pursuant to this section for purposes of the prepaid MTS surcharge*  
34 *calculated under Part 21 (commencing with Section 42001) on or*  
35 *before* October 15 of each year.

36 (e) At least 30 days prior to determining the surcharge pursuant  
37 to subdivision (a), the Office of Emergency Services shall prepare  
38 a summary of the calculation of the proposed surcharge and make  
39 it available to the public, the Legislature, the 911 Advisory Board,

1 and on its Internet Web site. The summary shall contain all of the  
2 following:

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

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

7 (3) The rationale for adjustment to the surcharge determined  
8 pursuant to subdivision (b), including, but not limited to, all  
9 impacts from the surcharge collected pursuant to Part 21  
10 (commencing with Section 42001).

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

14 SEC. 2. Section 41032 of the Revenue and Taxation Code is  
15 amended to read:

16 41032. Immediately upon notification by the Office of  
17 Emergency Services and fixing the surcharge rate, the board shall  
18 each year no later than November 15 publish in its minutes the  
19 new rate, and it shall notify ~~by mail~~ every service supplier  
20 registered with it of the new rate *by means then available to it,*  
21 *including, but not limited to, mail, electronic mail, or Internet Web*  
22 *site postings.*

23 SEC. 3. Section 42010 of the Revenue and Taxation Code is  
24 amended to read:

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

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

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

39 (1) The surcharge rate reported pursuant to subdivision (d) of  
40 Section 41030.

1 (2) The Public Utilities Commission’s reimbursement fee and  
2 telecommunications universal service surcharges, established by  
3 the Public Utilities Commission pursuant to subdivisions ~~(a) and~~  
4 ~~(b) and (c)~~ of Section 319 of the Public Utilities Code.

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

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

28 (3) The board shall also separately post on its Internet Web site  
29 the individual rates for each of the following:

30 (A) Each of the Public Utilities Commission surcharges that  
31 make up the Public Utilities Commission surcharge portion of the  
32 prepaid MTS surcharge, as reported pursuant to Section 319 of  
33 the Public Utilities Code.

34 (B) The percentage for the emergency telephone users surcharge  
35 reported pursuant to subdivision ~~(e)~~ (d) of Section 41030.

36 (C) Each of the individual local charges reported pursuant to  
37 Section 42101.5.

38 (4) A seller collecting the prepaid MTS surcharge and local  
39 charges pursuant to this part and Part 21.1 (commencing with  
40 Section 42100) may rely upon the accuracy of the information

1 posted on the board's Internet Web site in collecting and remitting  
2 all amounts of the prepaid MTS surcharge and local charges.

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

8 (2) A seller that is authorized to provide lifeline service under  
9 the state lifeline program or federal lifeline program, that sells  
10 prepaid mobile telephony services directly to the prepaid customer,  
11 shall remit the prepaid MTS surcharge to the board, less any  
12 applicable exemption from the surcharge that is applicable to the  
13 retail transaction pursuant to Section 42012.

14 (e) A seller that is not a direct seller shall be permitted to deduct  
15 and retain an amount equal to 2 percent of the amounts that are  
16 collected by the seller from prepaid consumers for the prepaid  
17 MTS surcharge and local charges, on a pro rata basis, according  
18 to that portion of the revenues collected by the seller for each of  
19 the following:

20 (1) The emergency telephone users surcharge.

21 (2) The Public Utilities Commission surcharges.

22 (3) Local charges.

23 (f) A direct seller shall remit the prepaid MTS surcharge and  
24 local charges as follows:

25 (1) That portion of the prepaid MTS surcharge that consists of  
26 the Public Utilities Commission surcharges shall be remitted to  
27 the commission with those reports required by the commission.

28 (2) That portion of the prepaid MTS surcharge that consists of  
29 the emergency telephone users surcharge shall be remitted to the  
30 board pursuant to the Emergency Telephone Users Surcharge Act  
31 (Part 20 (commencing with Section 41001)) for those retail  
32 transactions with a prepaid consumer in the state.

33 (3) Local charges, if applicable, shall be remitted to the local  
34 jurisdiction or local agency imposing the local charge. Remittance  
35 of the local charges shall be separately identified from any other  
36 local taxes or other charges that are remitted to the local jurisdiction  
37 or local entity imposing the local tax or other charge.

38 (g) A direct seller shall utilize the amounts posted by the board  
39 pursuant to subdivision (c) when determining what amounts to

1 remit to the Public Utilities Commission, board, and each local  
2 jurisdiction or local agency.

3 (h) A prepaid MTS provider shall offer prepaid consumers the  
4 option to make payment for additional prepaid usage directly to  
5 the prepaid MTS provider at the provider's retail location or  
6 Internet Web site.

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

13 (j) The prepaid MTS surcharge that is required to be collected  
14 by a seller and any amount unreturned to the prepaid consumer of  
15 mobile telephony services that is not owed as part of the surcharge,  
16 but was collected from the prepaid consumer under the  
17 representation by the seller that it was owed as part of the  
18 surcharge, constitute debts owed by the seller to this state. The  
19 local charge ~~shall that is required to be collected by a seller,~~ *seller*  
20 and any amount unreturned to the prepaid consumer of mobile  
21 telephony services that is not owed as part of the local ~~charge~~  
22 *charge*, but that was collected from the prepaid consumer under  
23 the representation by the seller that it was owed as part of the local  
24 ~~charge charge~~, *constitutes a debt debts* owed by the seller jointly  
25 to the state, for purposes of collection on behalf of, and payment  
26 to, the local jurisdiction and to the local jurisdiction imposing that  
27 local charge.

28 (k) A seller that has collected any amount of prepaid MTS  
29 surcharge and local charges in excess of the amount of the  
30 surcharge imposed by this part and actually due from a prepaid  
31 consumer may refund that amount to the prepaid consumer, even  
32 though the surcharge amount has already been paid over to the  
33 board and no corresponding credit or refund has yet been secured.  
34 Any seller making a refund of any charge to a prepaid consumer  
35 may repay therewith the amount of the surcharge paid.

36 (l) (1) Every prepaid consumer of mobile telephony services  
37 in this state is liable for the prepaid MTS surcharge and any local  
38 charges until they have been paid to this state, except that payment  
39 to a seller registered under this part relieves the prepaid consumer  
40 from further liability for the surcharge and local charges. Any

1 surcharge collected from a prepaid consumer that has not been  
2 remitted to the board shall be a debt owed to the state by the person  
3 required to collect and remit the surcharge. Any local charge  
4 collected from a prepaid consumer that has not been remitted to  
5 the board shall be a debt owed jointly to the state, for purposes of  
6 collection on behalf of, and payment to, the local jurisdiction and  
7 to the local jurisdiction imposing the local charge by the person  
8 required to collect and remit the local charge. Nothing in this part  
9 shall impose any obligation upon a seller to take any legal action  
10 to enforce the collection of the surcharge or local charge imposed  
11 by this section.

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

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

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

37 SEC. 4. This act is an urgency statute necessary for the  
38 immediate preservation of the public peace, health, or safety within  
39 the meaning of Article IV of the Constitution and shall go into  
40 immediate effect. The facts constituting the necessity are:

1 In order to allow sufficient time to promulgate and adopt  
2 regulations necessary to implement the recently enacted Prepaid  
3 Mobile Telephony Services Surcharge Act (Part 21 (commencing  
4 with Section 42001) of Division 2 of the Revenue and Taxation  
5 Code) and Local Prepaid Mobile Telephony Services Collection  
6 Act (Part 21.1 (commencing with Section 42100) of Division 2 of  
7 the Revenue and Taxation Code), it is necessary that this act take  
8 effect immediately.

O