

Assembly Bill No. 300

Passed the Assembly September 12, 2013

Chief Clerk of the Assembly

Passed the Senate September 11, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL’S DIGEST

AB 300, 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, or PUC, has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the PUC to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the PUC, except for a railroad corporation. The PUC is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized PUC budget for the same year, and an appropriate

reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state's telecommunications universal service programs and authorizes the PUC to impose charges for the purpose of funding those programs. Pursuant to this authority, the PUC has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge Collection Act (act). The bill would establish a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board, after deducting its administrative expenses, to deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. The bill would require the PUC to annually compute for prepaid mobile telephony services the PUC's reimbursement fee and 6 universal service program surcharges, to post notice of those fees and surcharges on its Internet Web site, and to notify the State Board of Equalization and the Office of Emergency Services of the amounts and the computation method used to determine the amounts, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would require the PUC, 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 PUC to make it available to the public and on the PUC'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 PUC exempt lifeline services from the PUC's reimbursement fee and the 6 end-user surcharges that fund the state's 6 universal service programs.

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

The bill would require the Office of Emergency Services to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services to post notice of those charges and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

Existing law defines mobile telephony services for purposes of the Public Utilities Code.

This bill would revise that definition and incorporate that definition for purposes of the Prepaid Mobile Telephony Service Surcharge Collection Act.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2015, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate

specified in an ordinance adopted pursuant to existing law, and would instead require the utility user tax rate to be applied during that period under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. In addition, the bill would, on or after January 1, 2015, 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, 2018.

(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.

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

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

SECTION 1. Section 224.4 of the Public Utilities Code is amended to read:

224.4. (a) “Mobile data service” means the delivery of nonvoice information over a radio band licensed by the Federal Communications Commission, to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. “Mobile data service” includes mobile broadband service offering connectivity over a radio band licensed by the Federal Communications Commission. Unless specified to the contrary, “mobile data service” does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a “Wi-Fi” network.

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

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

(d) “Mobile telephony service” means commercially available interconnected mobile phone services that provide voice communication access to the public switched telephone network (PSTN), or a successor network, by way of mobile communication devices employing radiowave technology to transmit calls,

including cellular radiotelephone, broadband Personal Communications Services (PCS), digital Specialized Mobile Radio (SMR), or another radio band licensed by the Federal Communications Commission. “Mobile telephony services” does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

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

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

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

(d) “Mobile telephony service” means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN), or a successor network, via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). “Mobile telephony service” does not include mobile satellite telephone services or mobile data

services used exclusively for the delivery of nonvoice information to a mobile device.

(e) This section shall become operative on January 1, 2018.

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

319. (a) The commission shall annually, on or before October 1 of each year, commencing October 1, 2014, compute a reimbursement fee as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code). On or before October 8 of each year, commencing October 8, 2014, the commission shall post notice of the reimbursement fee on its Internet Web site and notify both the Office of Emergency Services and the State Board of Equalization of this information as well as the computation method used to determine the reimbursement fee.

(b) The commission shall annually, on or before October 1 of each year, commencing October 1, 2014, compute the cumulative amount of the telecommunications universal service surcharges as a percentage of the sales price for prepaid mobile telephony services, to be effective on January 1 of the following year and to be collected and remitted pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code). On or before October 8 of each year, commencing October 8, 2014, the commission shall post notice of the cumulative surcharge on its Internet Web site and notify both the Office of Emergency Services and the State Board of Equalization of this information as well as the computation method used to determine the cumulative surcharge.

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

(2) In annually computing reimbursement fees and universal service surcharges to be collected and remitted to the commission pursuant to this section, the commission shall adjust the fees and

surcharges to account for any past overcollection of fees or surcharges from prepaid mobile telephony service customers resulting from a reduction in fees or surcharges made subsequent to December 31 of the previous year.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

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

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

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

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

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

(b) The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission

budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to Section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

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

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

(e) This section shall become operative on January 1, 2018.

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

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

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

(B) Notwithstanding subparagraph (A), on and after January 1, 2016, and before January 1, 2018, in lieu of the surcharge imposed under subparagraph (A), a surcharge shall be imposed on amounts paid for prepaid mobile telephony services pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)).

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

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

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

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

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier’s

contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year for purposes of this method. At the time the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

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

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

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

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

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

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

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

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

(f) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41020.5. Notwithstanding any other provision of this part, on and after January 1, 2015, and before January 1, 2016, a service supplier shall not collect the surcharge imposed under this part on the intrastate portion of charges made for prepaid mobile telephony services, and the service supplier shall remit to the board an amount equal to the amount of the surcharge that would have otherwise been collected, reported, and remitted to the board under this part on the intrastate portion of the charges made for prepaid mobile telephony services.

SEC. 8. Section 41030 of the Revenue and Taxation Code is amended to read:

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

(b) (1) Commencing with the calculation made on October 1, 2013, the surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1, 2014, to December 31, 2014, inclusive, but in no event shall the surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent.

(2) Commencing with the calculation made October 1, 2014, to be effective January 1, 2015, the surcharge shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services, the intrastate portion of prepaid mobile telephony services, and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall the surcharge rate in any year be greater than

three-quarters of 1 percent or less than one-half of 1 percent. In making its computation of the charges that are applicable to the intrastate portion of prepaid mobile telephony services, the Office of Emergency Services shall use the computation method developed by the Public Utilities Commission and reported to the Office of Emergency Services pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

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

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

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

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

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

(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to

December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent or less than one-half of 1 percent.

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

(1) The prior year's revenues to fund 911 costs.

(2) Projected expenses and revenues from all sources.

(3) The rationale for adjustment to the surcharge determined pursuant to subdivision (b), including, but not limited to, all impacts from the surcharge collected pursuant to Part 21 (commencing with Section 42001) as it existed on December 31, 2017.

(c) This section shall become operative on January 1, 2018.

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

PART 21. PREPAID MOBILE TELEPHONY SERVICES SURCHARGE COLLECTION ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES SURCHARGE

42010. (a) (1) On and after January 1, 2015, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) On and after January 1, 2016, the prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

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

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

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

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

(2) Notwithstanding paragraph (1), if a local agency notifies the board pursuant to subdivision (d) of Section 42101.5 that the posted rate is inaccurate or it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the board of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2015, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 of the Public Utilities Code shall not apply to prepaid mobile telephony services.

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

(d) (1) Except for amounts retained pursuant to subdivision (e), all amounts of the prepaid MTS surcharge and local charges

collected by sellers shall be remitted to the board pursuant to Chapter 3 (commencing with Section 42020).

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

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

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

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

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

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

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

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

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

(j) (1) A seller is relieved from liability to collect the prepaid MTS surcharge imposed by this part that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the seller or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A seller that has

previously paid the surcharge may, under rules and regulations prescribed by the board, take as a deduction on its return the amount found worthless and charged off by the seller. If any such accounts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the surcharge shall be paid with the return.

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

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

(b) 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 is exempt from the prepaid MTS surcharge if all of the following apply:

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

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

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

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

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

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

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

(B) If the prepaid consumer’s address is known by the seller to be in the state, including if the seller’s records maintained in the ordinary course of business indicate that the prepaid consumer’s

address is in the state and the records are not made or kept in bad faith.

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

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

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

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

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

(2) For a known-address transaction, the seller may collect the prepaid MTS surcharge and local charges that correspond to the five-digit postal ZIP Code of the prepaid consumer's address. A seller that, with due diligence and in good faith, relies on credible information to match the five-digit postal ZIP Code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charges amount, that collects that amount from the prepaid consumer, and that remits the amount to the board in compliance

with this part, shall not be liable for any additional MTS surcharge or local charges and shall not be required to refund any amounts collected and paid to the board to the prepaid consumer, even if the five-digit postal ZIP Code of the prepaid consumer's address that the seller uses corresponds to more than one local charge.

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

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

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

CHAPTER 3. ADMINISTRATION

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

(2) Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30, any person required, or that elects,

to remit amounts due under Part 1 (commencing with Section 6001) by electronic funds transfer pursuant to Article 1.2 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall remit prepaid MTS surcharge amounts due under this section by electronic funds transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42024. This part shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

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

PART 21.1. LOCAL PREPAID MOBILE TELEPHONY
SERVICES COLLECTION ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42101.5. (a) On and after January 1, 2015, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Section 42001) if, on or before September 1, 2014, the local agency shall enter into a contract with the board for the board to perform the functions set forth in Section 42103. In the contract, the local agency shall:

(1) certify to the board that its ordinance applies its local charge

to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the board, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) certify to the board the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(b) In the event that a local agency adopts a new local charge that is imposed on prepaid mobile telephony services after September 1, 2014, the local agency shall enter into a contract with the board to perform the functions set forth in Section 42103, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. In the contract, the local agency shall certify to the board: (1) that its ordinance applies its local charge to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the board, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and, (2) the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(c) In the event that a local agency increases its local charge after September 1, 2014, the local agency shall provide the board with written notice of the increased local charge on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

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

(e) Notwithstanding subdivision (a), through and including December 31, 2014, a prepaid MTS provider may elect to remit the local charge to the appropriate local taxing jurisdiction based on the applicable tax rate of Section 42102, Section 42102.5, or both, and those remittances shall be deemed to be in full compliance with the local ordinance imposing a local charge on prepaid mobile telephony service.

42102. (a) Notwithstanding any other law, on and after January 1, 2015, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a

utility user tax on the consumption of prepaid mobile telephony service in the city, county, or city and county at the rate as specified in an ordinance authorized pursuant to Section 7284.2 or any other law is suspended, and the utility user tax rate to be applied instead during the period under any ordinance as so adopted is the applicable of the following:

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

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

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

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

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

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

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

or city and county at the rate of 6.5 percent or more but less than 7.5 percent, the rate shall be 6.5 percent.

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

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

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

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

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

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

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

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

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

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

42102.5. (a) Notwithstanding any other law, on and after January 1, 2015, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, for 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 is suspended, and the rate to be applied instead during that period under any ordinance as so adopted is the applicable of the following:

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

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

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

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a charge at any rate, that applies to prepaid mobile telephony services, for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county, except

that during the period on and after January 1, 2015, any charge on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A consumer may rebut the presumed location of the retail transaction to the city or county clerk of the local jurisdiction, as provided in subdivision (b) of Section 42014, by filing a claim and declaration under penalty of perjury on a form established by the city or county clerk of the local jurisdiction indicating the actual

location of the retail sale. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

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

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

42106. (a) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

42110. (a) Notwithstanding Section 55381, it is unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, prepaid mobile telephony services surcharge and local charge records of the board pursuant to

subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

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

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

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

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

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

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

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

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

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

42111. This part shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 12. The repeal of any provision of Part 21 (commencing with Section 42001), and Part 21.1 (commencing with Section 42100), of Division 2, of the Revenue and Taxation Code, shall not affect the collection of the prepaid MTS surcharge, the liability of which accrued prior to January 1, 2018, the making of any refunds and effecting of any credits, the disposition of money collected, nor shall the repeal affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before that repeal; but all rights and liabilities under that law shall continue, and may be enforced in the same manner, as if the repeal had not been made.

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

SEC. 14. It is the intent of the Legislature that the remittance obligations of a prepaid mobile telephony services provider, relating to emergency telephone users surcharge and any charges imposed by the Public Utilities Commission pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code or for purposes of the universal services programs, shall continue to remain subject to the law existing prior to the effective date of this act until January 1, 2016. However, the law existing prior to the effective date of this act shall remain applicable for each of the following:

- (a) The collection of surcharges, the liability for which accrued prior to January 1, 2015.
- (b) The making of any refunds and the effecting of any credits.
- (c) The disposition of money collected.
- (d) The commencement of any action or proceeding pursuant to this part.

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

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

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

Approved _____, 2013

Governor