



# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1799

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H.P. 1326

House of Representatives, January 31, 2012

### **An Act Regarding the Collection of Fees for Prepaid Wireless Service**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative FITTS of Pittsfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 25 MRSA §2927, sub-§1-D, ¶B,** as enacted by PL 2009, c. 400, §8 and  
3 affected by §15, is amended to read:

4 B. The statewide prepaid wireless E-9-1-1 surcharge under subsection ~~1-F~~ 1-H levied  
5 on prepaid wireless telecommunications service consumers.

6 **Sec. 2. 25 MRSA §2927, sub-§1-F,** as amended by PL 2009, c. 617, §9 and  
7 affected by §13, is repealed.

8 **Sec. 3. 25 MRSA §2927, sub-§1-G,** as enacted by PL 2009, c. 400, §11 and  
9 affected by §15, is amended to read:

10 **1-G. E-9-1-1 funding obligation; limitation.** The statewide E-9-1-1 surcharge  
11 imposed by subsection 1-E and the prepaid wireless E-9-1-1 surcharge imposed by  
12 subsection ~~1-F~~ 1-H are the only E-9-1-1 funding obligations imposed with respect to  
13 telecommunications services in this State, and another tax, fee, surcharge or other charge  
14 may not be imposed by this State, any political subdivision of this State or any  
15 intergovernmental agency for funding E-9-1-1 purposes on any telecommunications  
16 service with respect to the sale, purchase, use or provision of that telecommunications  
17 service.

18 **Sec. 4. 25 MRSA §2927, sub-§1-H** is enacted to read:

19 **1-H. Statewide prepaid wireless telecommunications service E-9-1-1 surcharge.**  
20 The statewide prepaid wireless telecommunications service E-9-1-1 surcharge is 45¢ per  
21 retail transaction. The collection of the prepaid wireless E-9-1-1 surcharge is governed by  
22 Title 35-A, section 7104-C.

23 **Sec. 5. 25 MRSA §2927, sub-§2-B,** as amended by PL 2009, c. 400, §12 and  
24 affected by §15, is further amended to read:

25 **2-B. Surcharge remittance.** Each local exchange telephone utility, cellular or  
26 wireless telecommunications service provider and interconnected voice over Internet  
27 protocol service provider shall remit the statewide E-9-1-1 surcharge revenues collected  
28 from its customers pursuant to subsection 1-D on a monthly basis and within one month  
29 of the month collected to the Treasurer of State for deposit in a separate account known  
30 as the E-9-1-1 fund. Each telephone utility or service provider required to remit  
31 statewide E-9-1-1 surcharge revenues shall provide, on a form approved by the bureau,  
32 supporting data, including but not limited to the following:

33 A. The calculation used to arrive at the surcharge remittance amount;

34 B. The calculation used to arrive at the uncollectible amount of surcharge;

35 C. The total surcharge;

36 D. The month and year for which surcharge is remitted;

1 E. The legal name of company and telephone number and, if applicable, the parent  
2 company name, address and telephone number; and

3 F. The preparer's name and telephone number.

4 Prepaid wireless E-9-1-1 surcharges collected by sellers must be remitted to the Treasurer  
5 of State in accordance with ~~subsection F, paragraph G~~ Title 35-A, section 7104-C.

6 **Sec. 6. 35-A MRSA §7101, sub-§6** is enacted to read:

7 **6. Prepaid wireless telecommunications services.** The Legislature further finds  
8 that, because prepaid wireless telecommunications services are provided to consumers  
9 without a periodic bill, the collection of fees and surcharges regarding prepaid wireless  
10 telecommunications services must be accomplished according to a methodology that  
11 differs from the collection of fees and surcharges on other wireless telecommunications  
12 services to ensure fairness and competitive neutrality with respect to other  
13 telecommunications services provided to consumers of wireless telecommunications  
14 services who do receive a periodic bill.

15 **Sec. 7. 35-A MRSA §7102, sub-§§4 to 8** are enacted to read:

16 **4. Prepaid wireless telecommunications service.** "Prepaid wireless  
17 telecommunications service" has the same meaning as in Title 25, section 2921,  
18 subsection 13.

19 **5. Prepaid wireless telecommunications service consumer or prepaid wireless**  
20 **consumer.** "Prepaid wireless telecommunications service consumer" or "prepaid  
21 wireless consumer" has the same meaning as in Title 25, section 2921, subsection 13-A.

22 **6. Prepaid wireless telecommunications service provider.** "Prepaid wireless  
23 telecommunications service provider" has the same meaning as in Title 25, section 2921,  
24 subsection 14.

25 **7. Retail transaction.** "Retail transaction" has the same meaning as in Title 25,  
26 section 2921, subsection 15.

27 **8. Seller.** "Seller" has the same meaning as in Title 25, section 2921, subsection 16.

28 **Sec. 8. 35-A MRSA §7104, sub-§3**, as amended by PL 1999, c. 60, §1, is further  
29 amended to read:

30 **3. Authority.** The commission shall adopt rules to implement this section and may  
31 require providers of intrastate telecommunications services to contribute to a state  
32 universal service fund to support programs consistent with the goals of applicable  
33 provisions of this Title and the federal Telecommunications Act of 1996, Public Law  
34 104-104, 110 Stat. 56. Prior to requiring that providers of intrastate telecommunications  
35 services contribute to a state universal service fund, the commission shall assess the  
36 telecommunications needs of the State's consumers and establish the level of support  
37 required to meet those needs. If the commission establishes a state universal service fund  
38 pursuant to this section, the commission shall contract with an appropriate independent  
39 fiscal agent that is not a state entity to serve as administrator of the state universal service

1 fund. Funds contributed to a state universal service fund are not state funds. Rules and  
2 any state universal service fund requirements established by the commission pursuant to  
3 this section must:

4 A. Be reasonably designed to maximize federal assistance available to the State for  
5 universal service purposes;

6 B. Meet the State's obligations under the federal Telecommunications Act of 1996,  
7 Public Law 104 - 104, 110 Stat. 56;

8 C. Be consistent with the goals of the federal Telecommunications Act of 1996,  
9 Public Law 104 - 104, 110 Stat. 56;

10 D. Ensure that any requirements regarding contributions to a state universal service  
11 fund be nondiscriminatory and competitively neutral;

12 E. Require explicit identification on customer bills of contributions to any state  
13 universal service fund established pursuant to this section; and

14 F. Allow consideration in appropriate rate-making proceedings of contributions to  
15 any state universal service fund established pursuant to this section.

16 For purposes of this subsection, "providers of intrastate telecommunications services"  
17 includes providers of radio paging service and mobile telecommunications services. The  
18 amount of the contribution to a state universal service fund under this subsection related  
19 to prepaid wireless telecommunications services is determined pursuant to subsection  
20 3-A, and the collection of those contributions is governed by section 7104-C. Rules  
21 adopted under this subsection are routine technical rules as defined in Title 5, chapter  
22 375, subchapter ~~H-A~~ 2-A.

23 **Sec. 9. 35-A MRSA §7104, sub-§3-A** is enacted to read:

24 **3-A. Determination of amount of prepaid wireless telecommunications service**  
25 **fee.** The commission shall determine by rule the amount of the fee on prepaid wireless  
26 telecommunications service that is required to be contributed to a state universal service  
27 fund established under subsection 3. The fee is a fixed amount per retail transaction  
28 established by multiplying \$25 by a percentage that is determined by the commission for  
29 purposes of calculating contributions to the state universal service fund by providers of  
30 intrastate telecommunications services. The fee must be rounded to the nearest penny.  
31 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
32 chapter 375, subchapter 2-A.

33 **Sec. 10. 35-A MRSA §7104-B, sub-§2,** as amended by PL 2001, c. 522, §1, is  
34 further amended to read:

35 **2. Authority.** Pursuant to the authority granted in section 7104 and in order to carry  
36 out the policy goals established by section 7101, subsections 1, 2 and 4, the commission  
37 shall establish a telecommunications education access fund, referred to in this section as  
38 the "fund," and require all telecommunications carriers offering telecommunications  
39 services in the State and any other entities identified by the commission pursuant to  
40 subsection 8 to contribute to the fund. The amount of the contribution to the fund related  
41 to prepaid wireless telecommunications services is determined pursuant to subsection

1 2-A, and the collection of those contributions is governed by section 7104-C. The fund  
2 must be available, with any accumulated interest, to qualified libraries, qualified schools  
3 and the Raymond H. Fogler Library at the University of Maine to assist in paying the  
4 costs of acquiring and using advanced telecommunications technologies.

5 **Sec. 11. 35-A MRSA §7104-B, sub-§2-A** is enacted to read:

6 **2-A. Determination of amount of prepaid wireless telecommunications service**  
7 **fee.** The commission shall determine by rule the amount of the fee on prepaid wireless  
8 telecommunications service that is required to be contributed to the fund. The fee is a  
9 fixed amount per retail transaction established by multiplying \$25 by a percentage that is  
10 determined by the commission for purposes of calculating contributions to the fund by  
11 providers of intrastate telecommunications services. The fee must be rounded to the  
12 nearest penny. Rules adopted pursuant to this subsection are routine technical rules as  
13 defined in Title 5, chapter 375, subchapter 2-A.

14 **Sec. 12. 35-A MRSA §7104-C** is enacted to read:

15 **§7104-C. Collection of fees related to prepaid wireless telecommunications services**

16 **1. Prepaid wireless fee.** This section governs the fees and surcharges related to  
17 prepaid wireless telecommunications services, referred to in this section as "the prepaid  
18 wireless fee." The amount of the prepaid wireless fee is the sum of the following fees:

19 A. The amount of the fee that is required to be contributed to the state universal  
20 service fund as determined pursuant to section 7104, subsection 3-A;

21 B. The amount of the fee that is required to be contributed to the telecommunications  
22 education access fund as determined pursuant to section 7104-B, subsection 2-A; and

23 C. The statewide prepaid wireless telecommunications service E-9-1-1 surcharge  
24 levied on prepaid wireless telecommunications service consumers pursuant to Title  
25 25, section 2927, subsection 1-H.

26 **2. Collection of fees and surcharges related to prepaid wireless**  
27 **telecommunications services.** The collection of the prepaid wireless fee is governed by  
28 this subsection.

29 A. A seller of prepaid wireless telecommunications services shall collect the prepaid  
30 wireless fee from the prepaid wireless consumer for each retail transaction occurring  
31 in this State. The amount of the prepaid wireless fee must be separately stated on an  
32 invoice, receipt or similar document that is provided to the prepaid wireless consumer  
33 by the seller, when practicable. In circumstances in which disclosure of the prepaid  
34 wireless fee on an invoice, receipt or similar document is not practicable, the seller  
35 must make the information regarding the amount of the prepaid wireless fee available  
36 to the prepaid wireless consumer in another manner.

37 B. For purposes of paragraph A, a retail transaction that is effected in person by a  
38 prepaid wireless consumer at the business location of the seller is treated as occurring  
39 in this State if that business location is in this State. Any other retail transaction must

1 be treated as occurring in this State if the retail transaction is treated as occurring in  
2 this State for the purposes of Title 36, section 1752, subsection 8-B.

3 C. The prepaid wireless fee is the liability of the prepaid wireless consumer and not  
4 of the seller or of any prepaid wireless telecommunications service provider, except  
5 that the seller is liable to remit all prepaid wireless fees that the seller collects from  
6 prepaid wireless consumers as provided in this subsection, including all such charges  
7 that the seller is deemed to collect when the amount of the prepaid wireless fee has  
8 not been separately stated on an invoice, receipt or similar document provided to the  
9 prepaid wireless consumer by the seller.

10 D. The amount of the prepaid wireless fee that is collected by a seller from a prepaid  
11 wireless consumer, whether or not such amount is separately stated on an invoice,  
12 receipt or similar document provided to the prepaid wireless consumer by the seller,  
13 may not be included in the base for measuring any tax, fee, surcharge or other charge  
14 that is imposed by this State, any political subdivision of this State or any  
15 intergovernmental agency.

16 E. If the prepaid wireless fee is amended by rule or law, the new amount of the  
17 prepaid wireless fee must take effect at the beginning of the next calendar quarter that  
18 is at least 60 days after adoption or enactment of the change. The commission and the  
19 State Tax Assessor shall provide not less than 30 days' advance notice of the adoption  
20 or enactment of any change to the prepaid wireless fee amount on both the  
21 commission's publicly accessible website and the State Tax Assessor's publicly  
22 accessible website.

23 F. Prepaid wireless fees collected by sellers must be remitted to the State Tax  
24 Assessor. Prepaid wireless fees must be remitted at the times and in the manner  
25 provided for the remittance of sales tax under Title 36, section 1951-A and rules  
26 adopted pursuant to that section for the remittance of sales tax on an other than  
27 monthly basis. The State Tax Assessor shall establish registration and payment  
28 procedures that substantially coincide with registration and payment procedures as  
29 provided in Title 36, section 1754-B and related provisions.

30 G. A seller who is not a prepaid wireless telecommunications service provider may  
31 deduct and retain 3% of the prepaid wireless fee that is collected by the seller from a  
32 prepaid wireless consumer.

33 H. The State Tax Assessor shall establish procedures by which a seller may  
34 document that a sale is not a retail transaction. Procedures established under this  
35 paragraph must substantially coincide with the procedures for documenting a sale as  
36 a retail transaction as provided in Title 36, section 1754-B.

37 I. The State Tax Assessor shall remit all prepaid wireless fees collected pursuant to  
38 this subsection to the commission, which shall ensure that, within 30 days of receipt:

39 (1) The portion of the remitted prepaid wireless fees attributable to the E-9-1-1  
40 surcharge imposed by Title 25, section 2927, subsection 1-H is deposited in a  
41 separate account;

