

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

H.P. 1326 - L.D. 1799

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

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

**Sec. 1. 25 MRSA §2927, sub-§1-F, ¶¶B to J**, as enacted by PL 2009, c. 400, §10 and affected by §15, are repealed.

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

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

- A. The calculation used to arrive at the surcharge remittance amount;
- B. The calculation used to arrive at the uncollectible amount of surcharge;
- C. The total surcharge;
- D. The month and year for which surcharge is remitted;
- E. The legal name of company and telephone number and, if applicable, the parent company name, address and telephone number; and
- F. The preparer's name and telephone number.

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

**Sec. 3. 35-A MRSA §7101, sub-§6** is enacted to read:

**6. Prepaid wireless telecommunications services.** The Legislature further finds that, because prepaid wireless telecommunications services are provided to consumers

without a periodic bill, the collection of fees and surcharges regarding prepaid wireless telecommunications services must be accomplished according to a methodology that differs from the collection of fees and surcharges on other wireless telecommunications services to ensure fairness and competitive neutrality with respect to other telecommunications services provided to consumers of wireless telecommunications services who do receive a periodic bill.

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

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

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

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

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

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

**Sec. 5. 35-A MRSA §7104, sub-§3-A** is enacted to read:

**3-A. Determination of amount of prepaid wireless telecommunications service fee.** The commission shall determine by rule the amount of the fee on prepaid wireless telecommunications service that is required to be contributed to a state universal service fund established under subsection 3. The fee is a fixed amount per retail transaction established by multiplying \$25 by a percentage that is determined by the commission for purposes of calculating contributions to the state universal service fund by providers of intrastate telecommunications services. The fee must be rounded to the nearest penny. The fee may not be adjusted by the commission more frequently than once every 24 months. The collection of the fee is governed by section 7104-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 6. 35-A MRSA §7104-B, sub-§2-A** is enacted to read:

**2-A. Determination of amount of prepaid wireless telecommunications service fee.** The commission shall determine by rule the amount of the fee on prepaid wireless telecommunications service that is required to be contributed to the fund. The fee is a fixed amount per retail transaction established by multiplying \$25 by a percentage that is determined by the commission for purposes of calculating contributions to the fund by providers of intrastate telecommunications services. The fee must be rounded to the nearest penny. The fee may not be adjusted by the commission more frequently than

once every 24 months. The collection of the fee is governed by section 7104-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 7. 35-A MRSA §7104-C** is enacted to read:

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

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

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

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

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

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

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

B. For purposes of paragraph A, a retail transaction that is effected in person by a prepaid wireless consumer at the business location of the seller is treated as occurring in this State if that business location is in this State. Any other retail transaction must be treated as occurring in this State if the retail transaction is treated as occurring in this State for the purposes of Title 36, section 1752, subsection 8-B.

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

D. The amount of the prepaid wireless fee that is collected by a seller from a prepaid wireless consumer, whether or not such amount is separately stated on an invoice, receipt or similar document provided to the prepaid wireless consumer by the seller,

may not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this State, any political subdivision of this State or any intergovernmental agency.

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

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

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

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

I. The State Tax Assessor shall remit the total prepaid wireless fees collected pursuant to this subsection to the commission. The commission shall deposit the total fees into the prepaid wireless fee fund established in subsection 3 and shall ensure that, within 30 days of receipt:

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

(2) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104, subsection 3-A is deposited in the state universal service fund established pursuant to section 7104, subsection 3; and

(3) The portion of the remitted prepaid wireless fees attributable to the fee imposed under section 7104-B, subsection 2-A is deposited in the telecommunications education access fund established under section 7104-B, subsection 2.

**3. Fund established.** The prepaid wireless fee fund is established within the commission for the purposes of collecting and distributing funds pursuant to subsection 2, paragraph I.

**Sec. 8. Rulemaking.** The Public Utilities Commission shall determine by rule the amount of the fee to be collected from prepaid wireless telecommunications service consumers pursuant to the Maine Revised Statutes, Title 35-A, section 7104, subsection 3-A and section 7104-B, subsection 2-A no later than October 1, 2012. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 9. Appropriations and allocations.** The following appropriations and allocations are made.

**PUBLIC UTILITIES COMMISSION**

**Public Utilities - Administrative Division 0184**

Initiative: Establishes the prepaid wireless fee fund for the purposes of collecting and distributing prepaid wireless fees. The fees will be collected by the State Tax Assessor and credited to the Public Utilities Commission. The commission will transfer the funds to the state universal service fund and the telecommunications education access fund.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
All Other	\$0	\$500,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	\$0	\$500,000

**Sec. 10. Effective date.** This Act takes effect January 1, 2013, except that that section that requires the Public Utilities Commission to adopt rules by October 1, 2012 takes effect 90 days after adjournment of the Second Regular Session of the 125th Legislature.

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In House of Representatives, ..... 2012

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2012

Read twice and passed to be enacted.

..... President

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Approved ..... 2012

..... Governor