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## **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-D, ¶B,** as enacted by PL 2009, c. 400, §8 and affected by §15, is amended to read:

B. The statewide prepaid wireless E-9-1-1 surcharge under subsection ~~1-F1-H~~ levied on prepaid wireless telecommunications service consumers.

**Sec. 2. 25 MRSA §2927, sub-§1-F,** as amended by PL 2009, c. 617, §9 and affected by §13, is repealed.

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

**1-G. E-9-1-1 funding obligation; limitation.** The statewide E-9-1-1 surcharge imposed by subsection 1-E and the prepaid wireless E-9-1-1 surcharge imposed by subsection ~~1-F1-H~~ are the only E-9-1-1 funding obligations imposed with respect to telecommunications services in this State, and another tax, fee, surcharge or other charge may not be imposed by this State, any political subdivision of this State or any intergovernmental agency for funding E-9-1-1 purposes on any telecommunications service with respect to the sale, purchase, use or provision of that telecommunications service.

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

**1-H. Statewide prepaid wireless telecommunications service E-9-1-1 surcharge.**

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

**Sec. 5. 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 in accordance with ~~subsection 1-F, paragraph G~~Title 35-A, section 7104-C.

**Sec. 6. 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. 7. 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. 8. 35-A MRSA §7104, sub-§3**, as amended by PL 1999, c. 60, §1, is further amended to read:

**3. Authority.** The commission shall adopt rules to implement this section and may require providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring that providers of intrastate telecommunications services contribute to a state universal service fund, the commission

shall assess the telecommunications needs of the State's consumers and establish the level of support required to meet those needs. If the commission establishes a state universal service fund pursuant to this section, the commission shall contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund. Funds contributed to a state universal service fund are not state funds. Rules and any state universal service fund requirements established by the commission pursuant to this section must:

- A. Be reasonably designed to maximize federal assistance available to the State for universal service purposes;
- B. Meet the State's obligations under the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;
- C. Be consistent with the goals of the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;
- D. Ensure that any requirements regarding contributions to a state universal service fund be nondiscriminatory and competitively neutral;
- E. Require explicit identification on customer bills of contributions to any state universal service fund established pursuant to this section; and
- F. Allow consideration in appropriate rate-making proceedings of contributions to any state universal service fund established pursuant to this section.

For purposes of this subsection, "providers of intrastate telecommunications services" includes providers of radio paging service and mobile telecommunications services. The amount of the contribution to a state universal service fund under this subsection related to prepaid wireless telecommunications services is determined pursuant to subsection 3-A, and the collection of those contributions is governed by section 7104-C. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter H-A2-A.

**Sec. 9. 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

**2. Authority.** Pursuant to the authority granted in section 7104 and in order to carry out the policy goals established by section 7101, subsections 1, 2 and 4, the commission shall establish a telecommunications education access fund, referred to in this section as the "fund," and require all telecommunications carriers offering telecommunications services in the State and any other entities identified by the commission pursuant to subsection 8 to contribute to the fund. The amount of the contribution to the fund related to prepaid wireless telecommunications services is determined pursuant to subsection 2-A, and the collection of those contributions is governed by section 7104-C. The fund must be available, with any accumulated interest, to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine to assist in paying the costs of acquiring and using advanced telecommunications technologies.

**Sec. 11. 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. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 12. 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-H.

**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 all prepaid wireless fees collected pursuant to this subsection to the commission, which 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.

**Sec. 13. 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. 14. 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.

## SUMMARY

This bill establishes a methodology for the determination of the amount of fees imposed on prepaid wireless telecommunications service. Under the bill, the Public Utilities Commission is required to establish by rule the amount of a fee imposed on prepaid wireless telecommunications consumers for contribution to the state universal service fund, if any, and the telecommunications education access fund. The amount of the fee is the result of \$25 multiplied by a percentage determined by the commission by rule.

The bill also reallocates and amends the method of collection of the statewide prepaid wireless E-9-1-1 surcharge levied on prepaid wireless telecommunications service consumers and combines collection of the surcharge with the collection of the fees imposed on prepaid wireless telecommunications consumers for contribution to the state universal service fund and the telecommunications education access fund. The seller of prepaid wireless telecommunications services is required to collect the fees and surcharges from the prepaid wireless consumer for each retail transaction occurring in this State. The amount of the prepaid wireless fee, which is the sum of the 2 fees and the surcharge, must be separately stated on an invoice, receipt or similar document that is provided to the prepaid wireless consumer by the seller, when practicable. The seller is required to remit the fees and surcharges to the State Tax Assessor in the same manner as the sales tax. The State Tax Assessor is required to remit the fees and surcharges to the Public Utilities Commission for disbursement by the commission to the various funds.