

HOUSE BILL NO. 33
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING HOW 9-1-1 FEES ARE IMPOSED ON PREPAID CELL PHONES, EXCHANGE ACCESS SERVICES, AND OTHER 9-1-1 ACCESSIBLE SERVICES; CLARIFYING THE INTEREST ALLOWED ON OVERPAYMENTS; REVISING THE PENALTIES AND INTEREST FOR FAILING TO FILE A REPORT OR PAY FEES RELATED TO THE 9-1-1 PROGRAM; PROVIDING THAT A SUBSCRIBER MAY SEEK REVIEW OF AN ASSESSMENT; CLARIFYING HOW 9-1-1 FEES ARE APPLIED TO THE BUDGET OF THE 9-1-1 PROGRAM AND DISTRIBUTED TO 9-1-1 JURISDICTIONS; EXTENDING THE DISTRIBUTION OF ENHANCED 9-1-1 FUNDING FOR LESS-POPULATED COUNTIES; ADJUSTING THE DISTRIBUTION OF THE ENHANCED 9-1-1 FUNDING TO ADDRESS A DISCREPANCY IN LESS-POPULATED COUNTIES; AMENDING SECTIONS 10-4-201, 10-4-205, 10-4-211, 10-4-301, AND 10-4-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-4-201, MCA, is amended to read:

"10-4-201. Fees imposed for telephone exchange access services. (1) Except as provided in 10-4-202:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; and

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.

~~(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.~~
Fees imposed in this section must be collected by the provider as follows:

(a) An exchange access services provider and 9-1-1 accessible services provider shall impose a fee equal to the fees established in subsection (1) on the bill of the subscriber of exchange access line services and 9-1-1 accessible services. The subscriber is liable for the fee.

(b) A prepaid wireless telephone service provider shall remit an amount equal to the fees established in subsection (1) after collecting the amount using one of the following options:

(i) on a monthly basis, the prepaid service provider shall collect an amount equal to the fees established in subsection (1) from each active prepaid subscriber whose account balance is equal to or greater than the fees established in subsection (1); or

(ii) the prepaid service provider shall divide the total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless industry to determine the number of prepaid subscribers. The fees established in subsection (1) are then applied to the number of prepaid subscribers.

(3) ~~The provider shall collect the fees.~~ The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return."

Section 2. Section 10-4-205, MCA, is amended to read:

"10-4-205. Refund to provider for excess payment of fee. If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest. ~~interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. Interest is allowed on an overpayment at the same rate that is charged on delinquent taxes as provided in 15-1-216.~~ A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates."

Section 3. Section 10-4-211, MCA, is amended to read:

"10-4-211. Provider required to hold fee in trust for state -- penalty and interest. ~~(1) Every A~~ provider required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by 10-4-204.

~~(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest~~

is computed from the date the fee is due until the date of payment.

~~(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.~~

~~———(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.~~

~~(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.~~

~~———(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.~~

~~———(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7."~~

NEW SECTION. Section 4. Failure to pay or file -- penalty and interest -- review. (1) (a) A provider or subscriber who fails to file the report, make payment, or report and make payment as required by 10-4-204 must be assessed a penalty as provided in 15-1-216.

(b) The department of revenue may waive any penalty as provided in 15-1-206.

(2) (a) If a provider or subscriber fails to file the report required by 10-4-204 or if the department of revenue determines that the report understates the amount of tax due, the department of revenue may determine the amount of tax due and assess that amount against the provider or subscriber. The provider or subscriber may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department of revenue shall mail a notice and demand payment from the provider or subscriber. Penalty and interest is added to any deficiency assessment as provided in 15-1-216.

(3) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

Section 5. Section 10-4-301, MCA, is amended to read:

"10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

- (a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); and
- (b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b).

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 3.74% of the money received pursuant to 10-4-201 must be deposited in the state ~~general~~ special revenue fund, and that amount must be used to administer this part.

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302 and 10-4-311, is statutorily appropriated, as provided in 17-7-502, to the department.

(6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 6. Section 10-4-311, MCA, is amended to read:

"10-4-311. Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

- (a) collection of the fee imposed by 10-4-201(1)(b); and
- (b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid:

(a) for each fiscal year through the fiscal year ending June 30, ~~2007~~ 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; ~~and~~

(iii) the total distribution must be adjusted to ensure that each county receives at least the same amount as the counties that qualify under subsection (3)(a)(ii) even if the county is not eligible under subsection (3)(a)(ii); and

(b) for fiscal years beginning after June 30, ~~2007~~ 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations."

NEW SECTION. **Section 7. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 10, chapter 4, part 2, and the provisions of Title 10, chapter 4, part 2, apply to [section 4].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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