

1 SENATE BILL NO. 81

2 INTRODUCED BY K. REGIER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 9-1-1 FEES; REQUIRING THE PAYMENT OF 9-1-1
5 FEES FOR PREPAID WIRELESS SERVICES; ESTABLISHING HOW 9-1-1 FEES ARE IMPOSED ON
6 SERVICES; ESTABLISHING A PROCESS FOR THE COLLECTION OF PREPAID WIRELESS 9-1-1 FEES;
7 ALLOWING A SELLER OF PREPAID WIRELESS SERVICES TO DEDUCT AND RETAIN A PORTION OF
8 THE FEES; LIMITING LIABILITY FOR SELLERS THAT ENGAGE IN PREPAID WIRELESS TRANSACTIONS;
9 PROVIDING DEFINITIONS; AMENDING SECTIONS 10-4-101, 10-4-117, 10-4-201, 10-4-203, 10-4-204, 10-4-
10 205, 10-4-211, 10-4-212, AND 10-4-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

11

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

13

14 **NEW SECTION. Section 1. Collection of charge -- prepaid wireless services -- deduction.** (1) (a)

15 Except as provided in subsections (1)(d) and (3), a seller shall collect the fee imposed pursuant to 10-4-
16 201(1)(c) from the subscriber for each transaction occurring in Montana.

17 (b) The fee imposed pursuant to 10-4-201(1)(c) must be stated separately on an invoice, receipt, or
18 other similar document provided to the subscriber by the seller or otherwise disclosed to the subscriber.

19 (c) A transaction is considered to have occurred in Montana if:

20 (i) the sale to the subscriber occurs at a business located in Montana;

21 (ii) the prepaid wireless service is delivered to the subscriber at a Montana address provided to the
22 seller;

23 (iii) the seller's records that are maintained in the ordinary course of business indicate that the
24 subscriber's address is in Montana, and the records are not made or kept in bad faith;

25 (iv) the subscriber gives a Montana address during the consummation of the transaction, including the
26 subscriber's payment instrument, if no other address is available, and the address is not given in bad faith; or

27 (v) the subscriber's mobile telephone number is associated with a location in Montana.

28 (d) If the amount of a prepaid wireless service is denominated as 10 minutes or less or as \$5 or less,

1 a seller is not required to collect the fee imposed pursuant to 10-4-201(1)(c).

2 (2) (a) A seller may deduct and retain the entirety of the first quarter's fees of 2022.

3 (b) Beginning in the second quarter of 2022, a seller may deduct and retain 2% of the fee for each
4 transaction collected in accordance with 10-4-201(1)(c).

5 (3) A business entity may collect and remit the fee in accordance with this chapter for each seller
6 directly or indirectly owned or operated by that business entity.

7
8 **NEW SECTION. Section 2. Prepaid wireless services -- liability.** (1) The prepaid wireless 9-1-1 fee
9 collected pursuant to 10-4-201(1)(c) is the liability of the consumer and not of the seller, except that the seller is
10 liable to remit the prepaid wireless 9-1-1 fee that the seller collects from consumers to the department of
11 revenue in accordance with this chapter, including all fees that the seller collects when the amount of the fee is
12 not separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller in
13 accordance with [section 1(1)(b)].

14 (2) (a) A seller is not liable for damages to a person resulting from or incurred in connection with the
15 provision of or failure to provide 9-1-1 or enhanced 9-1-1 service or for identifying or failing to identify the
16 telephone number, address, location, or name associated with a person or device accessing or attempting to
17 access 9-1-1 or enhanced 9-1-1 service.

18 (b) A seller is not liable for damages to a person resulting from or incurred in connection with the
19 provision of any lawful assistance to any local government, state, or federal investigative or law enforcement
20 officer in connection with any lawful investigation or other law enforcement activity by the local government,
21 state, or federal investigative or law enforcement officer.

22 (3) The prepaid wireless 9-1-1 fee collected pursuant to 10-4-201(1)(c) is the only 9-1-1 funding
23 obligation imposed on prepaid wireless services in Montana, and no tax, fee, surcharge, or other charge may
24 be imposed for 9-1-1 funding purposes with respect to the sale, purchase, use, or provision of prepaid wireless
25 services.

26

27 **Section 3.** Section 10-4-101, MCA, is amended to read:

28 **"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following

1 definitions apply:

2 (1) "9-1-1 system" means telecommunications facilities, circuits, equipment, devices, software, and
3 associated contracted services for the transmission of emergency communications. A 9-1-1 system includes
4 the transmission of emergency communications:

5 (a) from persons requesting emergency services to a primary public safety answering point and
6 communications systems for the direct dispatch, relay, and transfer of emergency communications; and

7 (b) to or from a public safety answering point to or from emergency service units.

8 (2) "Access line" means a voice service of a provider of exchange access services, a wireless
9 provider, or a provider of interconnected voice over IP service that has enabled and activated service for its
10 subscriber to contact a public safety answering point via a 9-1-1 system by entering or dialing the digits 9-1-1.
11 When the service has the capacity, as enabled and activated by a provider, to make more than one
12 simultaneous outbound 9-1-1 call, then each separate simultaneous outbound call, voice channel, or other
13 capacity constitutes a separate access line.

14 (3) "Commercial mobile radio service" means:

15 (a) a mobile service that is:

16 (i) provided for profit with the intent of receiving compensation or monetary gain;

17 (ii) an interconnected service; and

18 (iii) available to the public or to classes of eligible users so as to be effectively available to a substantial
19 portion of the public; or

20 (b) a mobile service that is the functional equivalent of a mobile service described in subsection

21 (3)(a).

22 (4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

23 (5) "Emergency communications" means any form of communication requesting any type of
24 emergency services by contacting a public safety answering point through a 9-1-1 system, including voice,
25 nonvoice, or video communications, as well as transmission of any text message or analog digital data.

26 (6) "Emergency services" means services provided by a public or private safety agency, including law
27 enforcement, firefighting, ambulance or medical services, and civil defense services.

28 (7) "Exchange access services" means:

1 (a) telephone exchange access lines or channels that provide local access from the premises of a
2 subscriber in this state to the local telecommunications network to effect the transfer of information; and

3 (b) unless a separate tariff rate is charged for the exchange access lines or channels, a facility or
4 service provided in connection with the services described in subsection (7)(a).

5 (8) "Interconnected voice over IP service" means a service that:

6 (a) enables real-time, two-way voice communications;

7 (b) requires a broadband connection from a user's location;

8 (c) requires IP-compatible customer premises equipment; and

9 (d) permits users generally to receive calls that originate on the public switched telephone network
10 and to terminate calls to the public switched telephone network.

11 (9) "IP" means internet protocol, or the method by which data are sent on the internet, or a
12 communications protocol for computers connected to a network, especially the internet.

13 (10) "Local government" has the meaning provided in 7-11-1002.

14 (11) "Next-generation 9-1-1" means a system composed of hardware, software, data, and operational
15 policies and procedures that:

16 (a) provides standardized interfaces from call and message services;

17 (b) processes all types of emergency calls, including nonvoice or multimedia messages;

18 (c) acquires and integrates additional data useful to emergency communications;

19 (d) delivers the emergency communications or messages, or both, and data to the appropriate public
20 safety answering point and other appropriate emergency entities;

21 (e) supports data and communications needs for coordinated incident response and management;

22 and

23 (f) provides a secure environment for emergency communications.

24 (12) "Originating service provider" means an entity that provides capability for a retail customer to
25 initiate emergency communications.

26 (13) "Per capita basis" means a calculation made to allocate a monetary amount for each person
27 residing within the jurisdictional boundary of a county according to the most recent decennial census compiled
28 by the United States bureau of the census.

1 (14) "Prepaid wireless service" means a commercial mobile radio service that:

2 (a) allows a subscriber to use a 9-1-1 system to engage in emergency communications; and

3 (b) is paid for in advance and sold in predetermined units or dollars of which the number declines with
 4 use in a known amount, including prepaid wireless phone cards, recharge or refill authorization codes, and
 5 prepaid cell phones or other prepaid wireless devices preloaded with airtime minutes.

6 ~~(14)~~(15) "Private safety agency" means an entity, except a public safety agency, providing emergency
 7 fire, ambulance, or medical services.

8 ~~(15)~~(16) "Provider" means a public utility, a cooperative telephone company, a wireless provider, a
 9 provider of interconnected voice over IP service, a provider of exchange access services, or any other entity
 10 that provides access lines.

11 ~~(16)~~(17) "Public safety agency" means a functional division of a local or tribal government or the state
 12 that dispatches or provides law enforcement, firefighting, or emergency medical services or other emergency
 13 services.

14 ~~(17)~~(18) "Public safety answering point" means a communications facility operated on a 24-hour basis
 15 that first receives emergency communications from persons requesting emergency services and that may, as
 16 appropriate, directly dispatch emergency services or transfer or relay the emergency communications to
 17 appropriate public safety agencies.

18 ~~(18)~~(19) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a
 19 telephone request for emergency services, notes the pertinent information from the caller and relays the
 20 information to the appropriate public safety agency, other agencies, or other providers of emergency services
 21 for dispatch of an emergency unit.

22 (20) "Seller" means a person who owns or operates a business that sells prepaid wireless services
 23 directly to a subscriber.

24 ~~(19)~~(21) "Subscriber" means:

25 (a) an end user who has an access line or who contracts with a wireless provider for commercial
 26 mobile radio services; or

27 (b) a customer who purchases prepaid wireless services from a seller in a transaction.

28 (22) "Transaction" means the purchase of prepaid wireless service from a seller for any purpose other

1 than resale.

2 ~~(20)~~(23) "Transfer" means a service in which a public safety answering point, upon receipt of a
3 telephone request for emergency services, directly transfers the request to an appropriate public safety agency
4 or other emergency services provider.

5 ~~(24)~~(24) "Tribal government" has the meaning provided in 2-15-141.

6 ~~(22)~~(25) "Wireless provider" means an entity that is authorized by the federal communications
7 commission to provide facilities-based commercial mobile radio service within this state."
8

9 **Section 4.** Section 10-4-117, MCA, is amended to read:

10 **"10-4-117. Provider and seller obligations -- limitations.** Nothing in this chapter:

11 (1) relieves a provider or seller from its obligations pursuant to parts 1 through 3 of this chapter,
12 including obligations pursuant to 10-4-201 to collect 9-1-1 fees from customers on a per access line basis; or

13 (2) grants the department the authority to regulate the services offered by an originating service
14 provider or by a seller."
15

16 **Section 5.** Section 10-4-201, MCA, is amended to read:

17 **"10-4-201. Fees imposed for 9-1-1 services.** (1) Except as provided in 10-4-202:

18 (a) for 9-1-1 services, which do not include prepaid wireless services included in subsection (1)(c), a
19 fee of 75 72 cents a month per access line on each subscriber in the state is imposed for the administration of
20 9-1-1 programs in accordance with 10-4-305; and

21 (b) a fee of 25 23 cents a month per access line on each subscriber as defined in 10-4-101(21)(a) in
22 the state is imposed for the grants provided in accordance with 10-4-306; and

23 (c) for prepaid wireless 9-1-1 services, a fee of 95 cents per transaction in the state is imposed on
24 charges for prepaid wireless services.

25 (2) The subscriber paying for an access line or prepaid wireless service is liable for the fees imposed
26 by this section.

27 (3) (a) The Except as provided in subsection (3)(b), the provider shall collect the fees. The amount of
28 the fees collected by the provider is considered payment by the subscriber for that amount of fees.

1 **(b)** For the purposes of collecting the fee imposed in subsection (1)(c), the seller shall collect the fee
2 in accordance with this chapter. The amount of the fees collected by the seller is considered payment by the
3 subscriber for that amount of fees.

4 (4) Any return made by the provider or seller collecting the fees is prima facie evidence of payments
5 by the subscribers of the amount of fees indicated on the return."
6

7 **Section 6.** Section 10-4-203, MCA, is amended to read:

8 **"10-4-203. Provider and seller required to maintain record of collections.** ~~Every~~ A provider or
9 seller responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements,
10 make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever
11 necessary in the judgment of the department of revenue, it may require the provider, seller, or subscriber, as
12 defined in 10-4-101(21)(a), to make returns, render statements, or keep records sufficient to show whether
13 there is liability for the fee."
14

15 **Section 7.** Section 10-4-204, MCA, is amended to read:

16 **"10-4-204. Deadlines for filing returns.** (1) The provider or seller collecting the fee under 10-4-201
17 ~~must~~ shall file a return with the department of revenue on or before the last day of the month following the end
18 of each calendar quarter, reporting the amount of fee due on access lines or the amount charged for the
19 prepaid wireless fee during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-
20 202.

21 (2) When a return of the fee is required, the provider or seller required to make the return shall pay
22 the fee due the department of revenue at the time fixed for filing the return.

23 (3) The provider or seller shall pay the fee based on the net amount billed for the access line fee or
24 the amount charged for the prepaid wireless fee during the quarter.

25 (4) As used in this section, the "net amount billed for the access line fee" and the "amount charged for
26 the prepaid wireless fee" equals the gross amount billed or charged for the service, less deductions made in
27 accordance with [section 1(2)], adjustments for uncollectible accounts, refunds, incorrect billings, and other
28 appropriate adjustments."

1

2 **Section 8.** Section 10-4-205, MCA, is amended to read:

3 **"10-4-205. Refund to provider or seller for excess payment of fee.** If the amount paid by a
4 provider or seller to the department of revenue exceeds the amount of fee owed, the department of revenue
5 shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a
6 month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may
7 not be made to a provider or seller who fails to claim the refund within 5 years after the due date for filing of the
8 return with respect to which the claim for refund relates."

9

10 **Section 9.** Section 10-4-211, MCA, is amended to read:

11 **"10-4-211. Provider or seller required to hold fee in trust for state -- penalty and interest. (1)**
12 ~~Every~~ A provider or seller required to collect the fee imposed by 10-4-201 holds it in trust for the state of
13 Montana and for the payment ~~thereof~~ of the fees to the department of revenue in the manner and at the time
14 provided by 10-4-204.

15 (2) (a) If a provider or seller required to collect the fee fails to remit any amount held in trust for the
16 state of Montana or if a subscriber, as defined in 10-4-101(21)(a), fails to pay the fee on or before the last day
17 of the month following the end of each calendar quarter, the department of revenue shall add to the amount of
18 the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent
19 fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee
20 plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of
21 payment.

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

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

1 (b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A
 2 10% penalty must be added to the amount of the deficiency.

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

6 (5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the
 7 collection of the delinquent amount and all penalties, interest, and collection charges accrued ~~thereon~~ on the
 8 delinquent amount. The warrant is governed by the provisions of Title 15, chapter 1, part 7."
 9

10 **Section 10.** Section 10-4-212, MCA, is amended to read:

11 "**10-4-212. Provider or seller considered a taxpayer under provisions for fee.** Unless the context
 12 requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns,
 13 determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments,
 14 warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and
 15 procedures relating ~~thereto~~ to those provisions apply to this part as if the fee were a tax imposed upon or
 16 measured by net income. The provisions apply to the subscriber, as defined in 10-4-101(21)(a), liable for the
 17 fee and to the provider or seller required to collect the fee. Any amount collected and required to be remitted to
 18 the department of revenue is considered a tax upon the provider required to collect it, and that provider or seller
 19 is considered a taxpayer."
 20

21 **Section 11.** Section 10-4-305, MCA, is amended to read:

22 "**10-4-305. Distribution of 9-1-1 systems account by department.** (1) Beginning July 1, 2018, and
 23 for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total
 24 quarterly balance of the account provided for in 10-4-304(2)(a) as follows:

25 (a) each local and tribal government entity that hosts a public safety answering point must receive an
 26 allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by the
 27 local and tribal government entity that hosts the public safety answering point during the 2017 fiscal year;

28 (b) each local and tribal government entity that hosts a public safety answering point must receive an

1 allocation in accordance with subsection (1)(a). The allocation may vary from the amount distributed during the
2 2017 fiscal year based on the amount collected by the department of revenue in accordance with 10-4-
3 201(1)(a) and 10-4-201(1)(c).

4 (2) Beginning July 1, 2022, and in accordance with subsection (3), the department shall allocate and
5 distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) based on rules adopted by
6 the department in accordance with 10-4-108(3).

7 (3) Within 1 year after the official final decennial census figures are available, the department shall
8 update the rules establishing the quarterly allocation and distribution provided for in subsection (2) and allocate
9 and distribute the quarterly balance for each quarter after that until the next update."

10
11 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 and 2] are intended to be codified
12 as an integral part of Title 10, chapter 4, part 2, and the provisions of Title 10, chapter 4, part 2, apply to
13 [sections 1 and 2].

14
15 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

17
18 **NEW SECTION. Section 14. Effective date.** [This act] is effective January 1, 2022.

19 - END -