



AN ACT GENERALLY REVISING 9-1-1 FEES; ESTABLISHING HOW 9-1-1 FEES ARE IMPOSED ON PREPAID WIRELESS SERVICES; ESTABLISHING A PROCESS FOR THE COLLECTION OF PREPAID WIRELESS 9-1-1 FEES; ALLOWING A SELLER OF PREPAID WIRELESS SERVICES TO DEDUCT AND RETAIN A PORTION OF THE FEES; DETERMINING HOW PREPAID WIRELESS 9-1-1 FEES ARE APPLIED TO THE BUDGET OF THE 9-1-1 PROGRAM; LIMITING LIABILITY FOR SELLERS THAT ENGAGE IN PREPAID WIRELESS TRANSACTIONS; AMENDING SECTIONS 10-4-101, 10-4-201, 10-4-203, 10-4-204, 10-4-205, 10-4-211, 10-4-212, 10-4-301, AND 10-4-313, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Collection of charge -- prepaid wireless services -- deduction. (1) (a) Except as provided in subsections (1)(d) and (3), a seller shall collect the fee imposed pursuant to 10-4-201(1)(d) from the subscriber for each transaction occurring in Montana.

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

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

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

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

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

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

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

(d) If the amount of a prepaid wireless telecommunications service is denominated as 10 minutes or less or as \$5 or less, a seller is not required to collect the fee imposed pursuant to 10-4-201(1)(d).

(2) (a) Except as provided in subsection (2)(b), a seller may deduct and retain the entirety of the 2014

first quarter's fees.

(b) The amount retained in accordance with subsection (2)(a) may not exceed \$300. Any amount collected above \$300 must be held in trust for the state of Montana and for payment in accordance with 10-4-204.

(c) Beginning in the second quarter of 2014, a seller may deduct and retain 5% of the fee for each transaction collected in accordance with 10-4-201(1)(d).

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

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

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

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

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

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

"10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Allowable costs" means the actual costs associated with upgrading, purchasing, programming,

installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.

(2) "Basic 9-1-1 account" means the 9-1-1 emergency telecommunications account established in ~~10-4-301(1)(a)~~ 10-4-301(2)(a).

(3) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-103 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.

(4) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.

(5) "Commercial mobile radio service" means:

(a) a mobile service that is:

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

(ii) an interconnected service; and

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

(b) a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).

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

(7) "Direct dispatch" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(8) "Emergency" means an event that requires dispatch of a public or private safety agency.

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

(10) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in ~~10-4-301(1)(b)~~ 10-4-301(2)(b).

(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system

to request emergency services by dialing the digits 9-1-1.

(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(13) "Exchange access services" means:

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

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (13)(a).

(14) "Federal communications commission order" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

(15) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "Phase I wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "Phase II wireless enhanced 9-1-1" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

(18) "Place of primary use" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

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

(a) allows a subscriber to dial 9-1-1 to access basic 9-1-1 service; and

(b) is paid for in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

~~(19)~~(20) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

~~(20)~~(21) "Provider" means a public utility, a cooperative telephone company, or any other entity that provides telephone exchange access services.

~~(24)~~(22) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

~~(22)~~(23) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(23)~~(24) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

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

~~(24)~~(26) "Subscriber" means an end user who receives telephone exchange access services or who contracts with a wireless provider for commercial mobile radio services or a customer who purchases prepaid wireless services from a seller in a transaction.

(27) "Transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale.

~~(25)~~(28) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety agency or other provider of emergency services.

~~(26)~~(29) "Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.

~~(27)~~(30) "Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.

~~(28)~~(31) "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state."

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

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

(a) for basic 9-1-1 services, which do not include prepaid wireless services included in subsection (1)(d), a fee of ~~25~~ 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;

(b) for enhanced 9-1-1 services, which do not include prepaid wireless services included in subsection (1)(d), 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

(c) for wireless enhanced 9-1-1 services, which do not include prepaid wireless services included in subsection (1)(d), a fee of 50 cents a month per access line or 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

(d) for prepaid wireless basic and enhanced 9-1-1 services, a fee of \$1 per transaction in the state is imposed on charges for prepaid wireless services.

(2) The subscriber paying for exchange access line services or prepaid wireless services is liable for the fees imposed by this section.

(3) ~~(a) The~~ Except as provided in subsection (3)(b), 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.

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

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

Section 5. Section 10-4-203, MCA, is amended to read:

"10-4-203. Provider and seller required to maintain record of collections. Every A provider or seller responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider, seller, or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee."

Section 6. Section 10-4-204, MCA, is amended to read:

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

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

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

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

Section 7. Section 10-4-205, MCA, is amended to read:

"10-4-205. Refund to provider or seller for excess payment of fee. If the amount paid by a provider or seller 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 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. A refund may 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 return with respect to which the claim for refund relates."

Section 8. Section 10-4-211, MCA, is amended to read:

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

(2) (a) If a provider or seller 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 or seller 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 or seller. 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 or seller 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~~ on the delinquent amount. The warrant is governed by the provisions of Title 15, chapter 1, part 7."

Section 9. Section 10-4-212, MCA, is amended to read:

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

the provider or seller required to collect it, and that provider or seller is considered a taxpayer."

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

"10-4-301. Establishment of emergency telecommunications accounts. (1) 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 2.74% of the money received pursuant to 10-4-201 must be deposited in an account in the state special revenue fund to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (2).

~~(1)~~(2) 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 for 25% of the fees collected for prepaid wireless 9-1-1 services pursuant to 10-4-201(1)(d);

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b) and for 25% of the fees collected for prepaid wireless 9-1-1 services pursuant to 10-4-201(1)(d); and

(c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c) and for 50% of the fees collected for prepaid wireless 9-1-1 services pursuant to 10-4-201(1)(d). The money is allocated as follows:

(i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and

(ii) 50% of the account must be deposited in an account for distribution to wireless providers.

~~(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 2.74% of the money received pursuant to 10-4-201 must be deposited in an account in the state special revenue fund to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (1).~~

(3) The accounts established in subsection ~~(1)~~ (2) 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)~~ (2), as required by 10-4-302, 10-4-311, and 10-4-313, 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 11. Section 10-4-313, MCA, is amended to read:

"10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in ~~10-4-301(1)(c)(iii)~~ 10-4-301(2)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2015:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2015, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses,

within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in ~~10-4-301(1)(c)(i)~~ 10-4-301(2)(c)(i) to each 9-1-1 jurisdiction as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2015:

(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 balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2015, 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."

Section 12. Codification instruction. [Sections 1 and 2] are 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 [sections 1 and 2].

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

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective January 1, 2014.

- END -

I hereby certify that the within bill,
HB 0509, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 509

INTRODUCED BY K. REGIER

AN ACT GENERALLY REVISING 9-1-1 FEES; ESTABLISHING HOW 9-1-1 FEES ARE IMPOSED ON PREPAID WIRELESS SERVICES; ESTABLISHING A PROCESS FOR THE COLLECTION OF PREPAID WIRELESS 9-1-1 FEES; ALLOWING A SELLER OF PREPAID WIRELESS SERVICES TO DEDUCT AND RETAIN A PORTION OF THE FEES; DETERMINING HOW PREPAID WIRELESS 9-1-1 FEES ARE APPLIED TO THE BUDGET OF THE 9-1-1 PROGRAM; LIMITING LIABILITY FOR SELLERS THAT ENGAGE IN PREPAID WIRELESS TRANSACTIONS; AMENDING SECTIONS 10-4-101, 10-4-201, 10-4-203, 10-4-204, 10-4-205, 10-4-211, 10-4-212, 10-4-301, AND 10-4-313, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.