

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1799

H.P. 1326

House of Representatives, January 31, 2012

An Act Regarding the Collection of Fees for Prepaid Wireless Service

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative FITTS of Pittsfield.

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

2 **Sec. 1. 25 MRSA §2927, sub-§1-D, ¶B,** as enacted by PL 2009, c. 400, §8 and
3 affected by §15, is amended to read:

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

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7 affected by §13, is repealed.

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

10 **1-G. E-9-1-1 funding obligation; limitation.** The statewide E-9-1-1 surcharge
11 imposed by subsection 1-E and the prepaid wireless E-9-1-1 surcharge imposed by
12 subsection ~~1-F~~ 1-H are the only E-9-1-1 funding obligations imposed with respect to
13 telecommunications services in this State, and another tax, fee, surcharge or other charge
14 may not be imposed by this State, any political subdivision of this State or any
15 intergovernmental agency for funding E-9-1-1 purposes on any telecommunications
16 service with respect to the sale, purchase, use or provision of that telecommunications
17 service.

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

19 **1-H. Statewide prepaid wireless telecommunications service E-9-1-1 surcharge.**
20 The statewide prepaid wireless telecommunications service E-9-1-1 surcharge is 45¢ per
21 retail transaction. The collection of the prepaid wireless E-9-1-1 surcharge is governed by
22 Title 35-A, section 7104-C.

23 **Sec. 5. 25 MRSA §2927, sub-§2-B,** as amended by PL 2009, c. 400, §12 and
24 affected by §15, is further amended to read:

25 **2-B. Surcharge remittance.** Each local exchange telephone utility, cellular or
26 wireless telecommunications service provider and interconnected voice over Internet
27 protocol service provider shall remit the statewide E-9-1-1 surcharge revenues collected
28 from its customers pursuant to subsection 1-D on a monthly basis and within one month
29 of the month collected to the Treasurer of State for deposit in a separate account known
30 as the E-9-1-1 fund. Each telephone utility or service provider required to remit
31 statewide E-9-1-1 surcharge revenues shall provide, on a form approved by the bureau,
32 supporting data, including but not limited to the following:

33 A. The calculation used to arrive at the surcharge remittance amount;

34 B. The calculation used to arrive at the uncollectible amount of surcharge;

35 C. The total surcharge;

36 D. The month and year for which surcharge is remitted;

1 E. The legal name of company and telephone number and, if applicable, the parent
2 company name, address and telephone number; and

3 F. The preparer's name and telephone number.

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

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

7 **6. Prepaid wireless telecommunications services.** The Legislature further finds
8 that, because prepaid wireless telecommunications services are provided to consumers
9 without a periodic bill, the collection of fees and surcharges regarding prepaid wireless
10 telecommunications services must be accomplished according to a methodology that
11 differs from the collection of fees and surcharges on other wireless telecommunications
12 services to ensure fairness and competitive neutrality with respect to other
13 telecommunications services provided to consumers of wireless telecommunications
14 services who do receive a periodic bill.

15 **Sec. 7. 35-A MRSA §7102, sub-§§4 to 8** are enacted to read:

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

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

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

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

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

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

30 **3. Authority.** The commission shall adopt rules to implement this section and may
31 require providers of intrastate telecommunications services to contribute to a state
32 universal service fund to support programs consistent with the goals of applicable
33 provisions of this Title and the federal Telecommunications Act of 1996, Public Law
34 104-104, 110 Stat. 56. Prior to requiring that providers of intrastate telecommunications
35 services contribute to a state universal service fund, the commission shall assess the
36 telecommunications needs of the State's consumers and establish the level of support
37 required to meet those needs. If the commission establishes a state universal service fund
38 pursuant to this section, the commission shall contract with an appropriate independent
39 fiscal agent that is not a state entity to serve as administrator of the state universal service

1 fund. Funds contributed to a state universal service fund are not state funds. Rules and
2 any state universal service fund requirements established by the commission pursuant to
3 this section must:

4 A. Be reasonably designed to maximize federal assistance available to the State for
5 universal service purposes;

6 B. Meet the State's obligations under the federal Telecommunications Act of 1996,
7 Public Law 104 - 104, 110 Stat. 56;

8 C. Be consistent with the goals of the federal Telecommunications Act of 1996,
9 Public Law 104 - 104, 110 Stat. 56;

10 D. Ensure that any requirements regarding contributions to a state universal service
11 fund be nondiscriminatory and competitively neutral;

12 E. Require explicit identification on customer bills of contributions to any state
13 universal service fund established pursuant to this section; and

14 F. Allow consideration in appropriate rate-making proceedings of contributions to
15 any state universal service fund established pursuant to this section.

16 For purposes of this subsection, "providers of intrastate telecommunications services"
17 includes providers of radio paging service and mobile telecommunications services. The
18 amount of the contribution to a state universal service fund under this subsection related
19 to prepaid wireless telecommunications services is determined pursuant to subsection
20 3-A, and the collection of those contributions is governed by section 7104-C. Rules
21 adopted under this subsection are routine technical rules as defined in Title 5, chapter
22 375, subchapter ~~H-A~~ 2-A.

23 **Sec. 9. 35-A MRSA §7104, sub-§3-A** is enacted to read:

24 **3-A. Determination of amount of prepaid wireless telecommunications service**
25 **fee.** The commission shall determine by rule the amount of the fee on prepaid wireless
26 telecommunications service that is required to be contributed to a state universal service
27 fund established under subsection 3. The fee is a fixed amount per retail transaction
28 established by multiplying \$25 by a percentage that is determined by the commission for
29 purposes of calculating contributions to the state universal service fund by providers of
30 intrastate telecommunications services. The fee must be rounded to the nearest penny.
31 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
32 chapter 375, subchapter 2-A.

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

35 **2. Authority.** Pursuant to the authority granted in section 7104 and in order to carry
36 out the policy goals established by section 7101, subsections 1, 2 and 4, the commission
37 shall establish a telecommunications education access fund, referred to in this section as
38 the "fund," and require all telecommunications carriers offering telecommunications
39 services in the State and any other entities identified by the commission pursuant to
40 subsection 8 to contribute to the fund. The amount of the contribution to the fund related
41 to prepaid wireless telecommunications services is determined pursuant to subsection

1 2-A, and the collection of those contributions is governed by section 7104-C. The fund
2 must be available, with any accumulated interest, to qualified libraries, qualified schools
3 and the Raymond H. Fogler Library at the University of Maine to assist in paying the
4 costs of acquiring and using advanced telecommunications technologies.

5 **Sec. 11. 35-A MRSA §7104-B, sub-§2-A** is enacted to read:

6 **2-A. Determination of amount of prepaid wireless telecommunications service**
7 **fee.** The commission shall determine by rule the amount of the fee on prepaid wireless
8 telecommunications service that is required to be contributed to the fund. The fee is a
9 fixed amount per retail transaction established by multiplying \$25 by a percentage that is
10 determined by the commission for purposes of calculating contributions to the fund by
11 providers of intrastate telecommunications services. The fee must be rounded to the
12 nearest penny. Rules adopted pursuant to this subsection are routine technical rules as
13 defined in Title 5, chapter 375, subchapter 2-A.

14 **Sec. 12. 35-A MRSA §7104-C** is enacted to read:

15 **§7104-C. Collection of fees related to prepaid wireless telecommunications services**

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

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

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

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

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

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

37 B. For purposes of paragraph A, a retail transaction that is effected in person by a
38 prepaid wireless consumer at the business location of the seller is treated as occurring
39 in this State if that business location is in this State. Any other retail transaction must

1 be treated as occurring in this State if the retail transaction is treated as occurring in
2 this State for the purposes of Title 36, section 1752, subsection 8-B.

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

10 D. The amount of the prepaid wireless fee that is collected by a seller from a prepaid
11 wireless consumer, whether or not such amount is separately stated on an invoice,
12 receipt or similar document provided to the prepaid wireless consumer by the seller,
13 may not be included in the base for measuring any tax, fee, surcharge or other charge
14 that is imposed by this State, any political subdivision of this State or any
15 intergovernmental agency.

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

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

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

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

37 I. The State Tax Assessor shall remit all prepaid wireless fees collected pursuant to
38 this subsection to the commission, which shall ensure that, within 30 days of receipt:

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

