

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2009**

**2. Acceptance of delivery of tobacco products.** Only a licensed tobacco distributor or licensed tobacco retailer may accept delivery of tobacco products in this State.

**3. Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

C. For purposes of this section, each shipment or transport of tobacco products constitutes a separate violation.

D. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

E. If a court determines that a person has violated the provisions of this section, the court shall order any profits, gains, gross receipts or other benefits from the violation to be disgorged and paid to the Treasurer of State for deposit in the General Fund. Unless otherwise expressly provided, the penalties or remedies or both under this section are in addition to any other penalties and remedies available under any other law of this State.

**4. Rulemaking.** The department and the Department of Administrative and Financial Services shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**5. Forfeiture.** Any tobacco product sold or attempted to be sold in violation of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

**6. Exemption.** The provisions of this section do not apply to the delivery sale of premium cigars to a consumer.

**Sec. 6. Effective date.** This Act takes effect October 1, 2009.

Effective October 1, 2009.

## CHAPTER 399

### H.P. 657 - L.D. 954

#### An Act To Clarify the Role of the Public Advocate

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

**Sec. 1. 35-A MRSA §1701, sub-§1,** as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

**Sec. 2. 35-A MRSA §1701, sub-§1-A** is enacted to read:

**1-A. Appointment of the Public Advocate; term; removal.** This subsection governs the appointment, term of service and removal of the Public Advocate.

A. The Governor shall appoint the Public Advocate, subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities matters and to confirmation by the Legislature.

B. The Public Advocate shall serve for a 4-year term of office, beginning on February 1, 2013 and every 4 years thereafter.

C. The Public Advocate may continue to serve beyond the end of the 4-year term until a successor is appointed and qualified.

D. Any vacancy occurring must be filled by appointment for the unexpired portion of the term.

E. Any willful violation of this chapter by the Public Advocate constitutes sufficient cause for removal of the Public Advocate by the Governor, on the address of both branches of the Legislature or by impeachment pursuant to the Constitution of Maine, Article IX, Section 5.

**Sec. 3. Transition of Public Advocate.** Notwithstanding the Maine Revised Statutes, Title 35-A, section 1701, subsection 1-A, paragraph B, the term of the Public Advocate holding that office on the effective date of this Act ends on January 31, 2013.

See title page for effective date.

## CHAPTER 400

### H.P. 731 - L.D. 1056

#### An Act To Simplify the Assessment of E-9-1-1 Surcharges on Prepaid Wireless Telecommunications Service

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

**Sec. 1. 25 MRSA §2921, sub-§13**, as enacted by PL 2007, c. 68, §3, is amended to read:

**13. Prepaid wireless telecommunications service.** "Prepaid wireless ~~telephone~~ telecommunications service" means a cellular or wireless telecommunications service that ~~the customer pays for prior to activation of the service~~ allows a caller to dial 9-1-1 to access the E-9-1-1 system, which service must be paid for in advance and is sold in predetermined units or dollars that declines with use in a known amount.

**Sec. 2. 25 MRSA §2921, sub-§13-A** is enacted to read:

**13-A. Prepaid wireless telecommunications service consumer.** "Prepaid wireless telecommunications service consumer" or "prepaid wireless consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

**Sec. 3. 25 MRSA §2921, sub-§14**, as enacted by PL 2007, c. 68, §4, is amended to read:

**14. Prepaid wireless telecommunications service provider.** "Prepaid wireless ~~telephone~~ telecommunications service provider" means a ~~cellular or person that provides prepaid wireless telecommunications service provider that sells prepaid wireless telephone service at wholesale or retail pursuant to a license issued by the Federal Communications Commission.~~

**Sec. 4. 25 MRSA §2921, sub-§15** is enacted to read:

**15. Retail transaction.** "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

**Sec. 5. 25 MRSA §2921, sub-§16** is enacted to read:

**16. Seller.** "Seller" means a person who sells prepaid wireless telecommunications service to another person.

**Sec. 6. 25 MRSA §2927, sub-§1-B**, as amended by PL 2007, c. 637, §1, is repealed.

**Sec. 7. 25 MRSA §2927, sub-§1-C**, as enacted by PL 2007, c. 68, §6, is repealed.

**Sec. 8. 25 MRSA §2927, sub-§1-D** is enacted to read:

**1-D. Funding.** The activities authorized under this chapter are funded through:

A. The statewide E-9-1-1 surcharge under subsection 1-E levied on:

(1) Each residential and business telephone exchange line, including private branch exchange lines and Centrex lines;

(2) Semipublic coin and public access lines;

(3) Customers of interconnected voice over Internet protocol service; and

(4) Customers of cellular or wireless telecommunications service that is not prepaid wireless telecommunications service; and

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

**Sec. 9. 25 MRSA §2927, sub-§1-E** is enacted to read:

**1-E. Statewide E-9-1-1 surcharge.** The statewide E-9-1-1 surcharge is governed by this subsection.

A. The statewide E-9-1-1 surcharge is 30¢ per month per line or number. The statewide E-9-1-1 surcharge may not be imposed on more than 25 lines or numbers per customer billing account.

B. The statewide E-9-1-1 surcharge must be collected from the customer according to subsection 1-D, paragraph A on a monthly basis by each local exchange telephone utility, cellular or wireless telecommunications service provider and interconnected voice over Internet protocol service provider and be shown separately as a statewide E-9-1-1 surcharge on the customer's bill.

C. The place of residence of cellular or wireless telecommunications service customers who are not prepaid wireless telecommunications service consumers must be determined according to the sourcing rules for mobile telecommunications services as set forth in Title 36, section 2556.

**Sec. 10. 25 MRSA §2927, sub-§1-F** is enacted to read:

**1-F. Statewide prepaid wireless telecommunications service E-9-1-1 surcharge.** The statewide prepaid wireless telecommunications service E-9-1-1 surcharge, referred to in this subsection as "the prepaid wireless E-9-1-1 surcharge," is governed by this subsection.

A. The prepaid wireless E-9-1-1 surcharge is 30¢ per retail transaction.

B. The prepaid wireless E-9-1-1 surcharge must be collected by the seller from the prepaid wireless consumer according to subsection 1-D, paragraph B with respect to each retail transaction occurring in this State. The amount of the prepaid wireless E-9-1-1 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. In circumstances

in which disclosure of the E-9-1-1 surcharge on an invoice, receipt or similar document is not practicable, the seller must otherwise make information available to the consumer regarding the amount of the E-9-1-1 prepaid surcharge.

C. For purposes of paragraph B, 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.

D. The prepaid wireless E-9-1-1 surcharge 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 E-9-1-1 surcharges 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 surcharge has not been separately stated on an invoice, receipt or similar document provided to the prepaid wireless consumer by the seller.

E. The amount of the prepaid wireless E-9-1-1 surcharge 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.

F. If the prepaid wireless E-9-1-1 surcharge amount established in paragraph A is amended, the new surcharge amount takes effect 60 days after enactment of the change to the surcharge amount in paragraph A. The bureau shall provide not less than 30 days advance notice of any change to the surcharge amount on the bureau's publicly accessible website.

G. Prepaid wireless E-9-1-1 surcharges collected by sellers must be remitted to the Treasurer of State. Prepaid wireless E-9-1-1 surcharges must be remitted at the times and in the manner provided for the remittance of sales taxes under Title 36, section 1951-A and rules adopted pursuant to that section for the remittance of sales taxes 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.

H. A seller who is not a prepaid wireless telecommunications service provider may deduct and retain 3% of prepaid wireless E-9-1-1 surcharges that are collected by the seller from consumers.

I. The State Tax Assessor shall establish procedures by which a seller may document that a sale is not a retail transaction, which procedures must substantially coincide with the procedures for documenting a sale for retail transaction as provided in Title 36, section 1754-B.

J. The State Tax Assessor shall ensure that all remitted prepaid wireless E-9-1-1 surcharges are deposited in the E-9-1-1 fund under subsection 2-B within 30 days of receipt. For prepaid wireless E-9-1-1 surcharges remitted during the period beginning January 1, 2010 and ending December 31, 2011, the State Tax Assessor may deduct an amount not to exceed 2% of remitted prepaid wireless E-9-1-1 surcharges to reimburse the direct costs of the assessor for administering the collection and remittance of the prepaid wireless E-9-1-1 surcharges during that period.

**Sec. 11. 25 MRSA §2927, sub-§1-G** is enacted 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-F 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. 12. 25 MRSA §2927, sub-§2-B**, as amended by PL 2007, c. 68, §7, is further amended to read:

**2-B. Surcharge remittance.** Each local exchange telephone utility, cellular or wireless telecommunications service provider, ~~including a prepaid wireless telephone 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 ~~this section~~ 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.

**Sec. 13. Transfer from Other Special Revenue Funds; Public Utilities Commission.** Notwithstanding any other provision of law, on or before October 1, 2009 the State Controller shall transfer \$10,000 from the Public Utilities Commission E-9-1-1 fund to the Bureau of Revenue Services, Internal Services Fund account established pursuant to the Maine Revised Statutes, Title 36, section 114.

**Sec. 14. Appropriations and allocations.** The following appropriations and allocations are made.

#### **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

##### **Bureau of Revenue Services Fund 0885**

Initiative: Provides a one-time allocation of \$10,000 to Maine Revenue Services for computer programming changes and also provides an allocation for other administrative costs to be reimbursed through retention of 2% of telecommunications prepaid wireless fees collected for the Public Utilities Commission.

<b>BUREAU OF REVENUE SERVICES FUND</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$10,880	\$1,720
<b>BUREAU OF REVENUE SERVICES FUND TOTAL</b>	<b>\$10,880</b>	<b>\$1,720</b>

**Sec. 15. Effective date.** This Act takes effect January 1, 2010.

Effective January 1, 2010.

#### **CHAPTER 401 H.P. 301 - L.D. 413**

##### **An Act To Clarify Land Use Regulation in Unorganized and Deorganized Townships**

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

**Sec. 1. 12 MRSA §681, 2nd ¶**, as amended by PL 1973, c. 569, §1, is further amended to read:

~~In addition, the~~ The Legislature declares it to be in the public interest, for the public benefit ~~and, for the good order of the people of this State and for the benefit of the property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned well-planned and well-managed well-managed~~ multiple use of land and resources ~~and, The Legislature acknowledges the importance of these areas in the continued vitality of the State and to local economies. Finally, the Legislature desires to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.~~

See title page for effective date.

#### **CHAPTER 402 H.P. 994 - L.D. 1418**

##### **An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, the State's rate of mortgages in foreclosure is rising to unprecedented levels, both for prime and subprime mortgages; and

**Whereas**, foreclosures are expected to continue in the State because homeowners will not be able to afford payments due to rising adjustable mortgage payments, rising unemployment and job loss; and

**Whereas**, homeowners are expected to have continued problems selling their properties at the value of their mortgages due to falling housing prices; and

**Whereas**, foreclosures contribute to the decline in the State's housing market, loss of property values and loss of tax revenues; and

**Whereas**, the number of foreclosure actions in the courts is rapidly increasing and the current system for resolving foreclosure actions is creating a burden on the court system; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preserva-