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SB-344 Local Prepaid Mobile Telephony Services Collection Act. (2019-2020)

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Senate Bill No. 344

CHAPTER 642

An act to amend Sections 42018, 42101.5, 42103, and 42111 of the Revenue and Taxation Code, relating to prepaid mobile telephony services.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 344, McGuire. Local Prepaid Mobile Telephony Services Collection Act.

The Local Prepaid Mobile Telephony Services Collection Act (local prepaid MTS act), until January 1, 2020, suspends the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service and any charge that applies to prepaid mobile telephony service, as defined, on access to communication services or access to local "911" emergency telephone systems, and instead requires those taxes and charges to be applied during the period beginning January 1, 2016, and ending January 1, 2020, under any local ordinance to be at specified rates. The local prepaid MTS act requires that these local charges imposed by a city, county, or a city and county, on prepaid mobile telephony services be collected from the prepaid consumer by a seller at the same time of the retail sale, as specified. Existing law requires that all local charges be collected and paid to the California Department of Tax and Fee Administration pursuant to the Fee Collection Procedures Law, be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, and be transmitted to the city, county, or a city and county, as provided.

This bill would extend operation of the local prepaid MTS act until January 1, 2021. By extending the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

Existing law generally provides, for purposes of the local prepaid MTS act, that if prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price, then the local charges apply to the entire price.

This bill would provide that the local charges apply to the entire price unless the seller can identify the services or products that are not subject to local charges from its books and records kept in the ordinary course of business. This bill would make other nonsubstantive changes.

The local prepaid MTS act authorizes a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By extending the local MTS act until January 1, 2021, the bill would expand the crime of perjury, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 42018 of the Revenue and Taxation Code is amended to read:

42018. (a) Except as provided in subdivisions (b) and (c), if prepaid mobile telephony services are sold in combination with services or products that are not subject to local charges for a single price, then the local charges shall apply to the entire price unless the seller can identify the services or products that are not subject to local charges from its books and records kept in the ordinary course of business.

(b) If prepaid mobile telephony services are sold with a mobile telephone service communication device, commonly termed a cellular telephone, for a single, nonitemized price, then the local charges shall apply to the entire nonitemized price, except if the purchase price for the cellular phone component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written or electronic documentation provided to the prepaid consumer, the local charges may be calculated excluding the separately stated price of the cellular telephone.

(c) If a minimal amount of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, the seller shall not apply the local charges to the transaction. For these purposes, a service allotment denominated as 10 minutes or less, or five dollars (\$5) or less, is a minimal amount.

(d) Notwithstanding Section 42024, this section shall remain operative until January 1, 2021, and shall be repealed as of that date.

SEC. 2. Section 42101.5 of the Revenue and Taxation Code is amended to read:

42101.5. (a) (1) On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge was collected and remitted by the seller as specified under Part 21 (commencing with Section 42001), as that law read on January 1, 2017, except as Section 42018 has been amended, if, on or before September 1, 2015, the local agency shall enter into a contract with the department for the department to perform the functions set forth in Section 42103. In the contract, the local agency shall: (A) certify to the department that its ordinance applies its local charge to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the department, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and (B) certify to the department the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(2) A seller that is not a direct seller shall be permitted to deduct and retain an amount equal to 2 percent of the amounts that are collected by the seller from prepaid consumers for local charges.

(b) In the event that a local agency adopts a new local charge that is imposed on prepaid mobile telephony services after September 1, 2015, the local agency shall enter into a contract with the department to perform the functions set forth in Section 42103, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. In the contract, the local agency shall certify to the department: (1) that its ordinance applies its local charge to prepaid mobile telephony services and that the local agency agrees to indemnify, and hold and save harmless, the department, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract; and (2) the amount of the local 911 charge, as set out in Section 42102.5, or the applicable tiered rate for a utility user tax, as set out in Section 42102.

(c) In the event that a local agency increases its local charge after September 1, 2015, the local agency shall provide the department with written notice of the increased local charge on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(d) In the event that a local agency reduces or eliminates a local charge on prepaid mobile telephony services, the local agency shall provide the department with written notice pursuant to subdivision (c) of Section 42010.

(e) Notwithstanding subdivision (a), through and including December 31, 2015, a prepaid MTS provider may elect to remit the local charge to the appropriate local taxing jurisdiction based on the applicable tax rate of Section 42102, Section 42102.5, or both, and those remittances shall be deemed to be in full compliance with the local ordinance imposing a local charge on prepaid mobile telephony service.

SEC. 3. Section 42103 of the Revenue and Taxation Code is amended to read:

42103. (a) The department shall perform all functions incident to the collection of the local charges of a local jurisdiction or local agency and shall collect and administer the local charges in the manner prescribed for the collection of the prepaid MTS surcharge in the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42001)), as that law read on January 1, 2017, subject to the limitations set forth in Section 42105. For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the local charge imposed by this part, and references to "feepayer" shall include a person required to pay the local charge imposed by this part, which includes the seller.

(b) All local charges collected by the department shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund which is hereby created in the State Treasury, and shall be held in trust for the local taxing jurisdiction, and shall not be used for any other purpose. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the department, less payments for refunds and reimbursement to the department for expenses incurred in the administration and collection of the local charges. The department shall transmit the funds to the local jurisdictions periodically as promptly as feasible. The transmittals required under this section shall be made at least once in each calendar quarter. The department shall furnish a quarterly statement indicating the amounts paid and withheld for expenses of the department and subject to subdivision (e) of Section 42020.

(c) The department shall prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

(d) The department's audit duties under this part shall be limited to verification that the seller complied with this part.

(e) Subject to the confidentiality requirements of Sections 7284.6, 7284.7, and 19542, the department shall make available to a requesting local jurisdiction or local agency any information that is reasonably available to the department regarding the proper collection and remittance of a local charge of the local jurisdiction or local agency by a seller, including a direct seller.

(f) The department may contract with a third party for purposes of this part, solely in connection with the following department duties:

(1) To allocate and transmit collected local charges in the Local Charges for Prepaid Mobile Telephony Services Fund pursuant to subdivision (b) to the appropriate local jurisdictions.

(2) To audit proper collection and remittance of the local charge pursuant to this part.

(3) To respond to requests from sellers, consumers, boards, and others regarding issues pertaining to local charges that are within the scope of the department's duties.

(g) For purposes of this part, any third-party contract under subdivision (f) shall be subject to the following limitations:

(1) Any third party shall, to the same extent as the department, be subject to subdivision (b) of Section 55381, relating to unlawful disclosures.

(2) A third-party contract shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered. For purposes of this section, "contingent fee" includes, but is not limited to, a fee that is based on a percentage of the tax liability reported on a return, a fee that is based on a percentage of the taxes owed, or a fee that depends on the specific tax result attained.

(h) Except for sharing of information pursuant to subdivision (e), this section does not apply to direct sellers.

SEC. 4. Section 42111 of the Revenue and Taxation Code is amended to read:

42111. This part shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.