

Senate Bill No. 1441

Passed the Senate August 31, 2020

Secretary of the Senate

Passed the Assembly August 30, 2020

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2020, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 42100, 42101, 42101.5, 42101.7, 42103, 42105, 42106, 42107, 42109, 42110, and 42111 of, and to add Sections 42101.6, 42101.8, 42101.9, 42103.1, and 42103.2 to, the Revenue and Taxation Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, McGuire. Local Prepaid Mobile Telephony Services Collection Act.

The Local Prepaid Mobile Telephony Services Collection Act (local prepaid MTS act), until January 1, 2021, suspends the authority of a 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, 2021, 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 and be deposited into the Local Charges for Prepaid Mobile Telephony Services Fund, and be transmitted to the city, county, or city and county, as provided.

This bill would extend operation of the local prepaid MTS act until January 1, 2026, and would make nonsubstantive changes to eliminate cross-references in the local prepaid MTS act to the Prepaid Mobile Telephony Services Surcharge Collection Act.

Pursuant to existing law, the California Department of Tax and Fee Administration succeeded to certain duties and responsibilities of the State Board of Equalization.

This bill would change obsolete references to the board in the local prepaid MTS act.

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 prepaid MTS act, 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 42100 of the Revenue and Taxation Code is amended to read:

42100. (a) This part shall be known and may be cited as the Local Prepaid Mobile Telephony Services Collection Act.

(b) The Legislature finds and declares all of the following:

(1) Maintaining effective and efficient communications services, 911 emergency systems, communications-related public policy programs to promote universal service, and various local programs across the state benefit all persons with access to the telecommunications system.

(2) Providers of end-use communications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit utility users taxes and local 911 or access charges (local charges) imposed by over 150 cities and counties in California on end-users of such mobile telephony services, as required by existing state or local law.

(3) Local charges on telecommunication services represent an important source of tax revenue for many cities and counties and are used to pay for such essential governmental services as public safety, streets, parks, libraries, senior centers, and many more.

(4) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaid mobile telephony services, unlike postpaid mobile telephony services, are

frequently sold by a third-party seller that is not the provider of mobile telephony services, and collecting local charges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means for the collection of those local charges.

(5) The collection of prepaid mobile telephony services by third-party sellers and the remittance of those local charges to the department involves administrative costs and responsibilities that are unique to prepaid mobile telephony services, and therefore justify unique reimbursement and tax rate simplification measures, which are fair and reasonable.

(c) It is a matter of statewide concern that the local charges for local prepaid mobile telephony services be collected in a uniform manner in order for the collection to be fair and uniform on a statewide basis.

(d) It is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulations concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services to the extent those provisions are inconsistent with the provisions of this part. It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.

SEC. 2. Section 42101 of the Revenue and Taxation Code is amended to read:

42101. For purposes of this part, all of the following definitions shall apply:

(a) “Department” means the California Department of Tax and Fee Administration.

(b) (1) “Direct seller” means a prepaid MTS provider or services supplier, as defined in subdivision (l), that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited to, any of the following:

(A) A telephone corporation, as defined in Section 234 of the Public Utilities Code.

(B) An interconnected Voice over Internet Protocol (VoIP) service, as defined in Section 285 of the Public Utilities Code.

(C) A retailer, as defined in Section 6203, that is a member of the same commonly controlled group, as defined in Section 25105, or that is a member of the same combined reporting group, as defined in Section 25106.5(b)(3) of Title 18 of the California Code of Regulations or any successor regulation, as an entity defined in subparagraphs (A) or (B).

(2) For purposes of this subdivision, “sale” means any transfer of title, possession, exchange, or barter, conditional or otherwise.

(c) “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(d) “Local charge” means the utility user taxes as described in Section 42102, and charges for access to communication services or to local “911” emergency telephone systems, as described in Section 42102.5.

(e) “Local jurisdiction” or “local agency” means a city, county, or city and county, which includes a charter city, county, or city and county.

(f) “Mobile data service” has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(g) “Mobile telephony service” or “MTS” has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(h) “Ordinance” refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance.

(i) “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, or syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

(j) “Prepaid consumer” means a person who purchases prepaid mobile telephony services in a retail transaction.

(k) “Prepaid mobile telephony services” means the right to use a mobile device for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must

be purchased in advance of usage in predetermined units or dollars. For these purposes, “telecommunications service” and “information service” have the same meanings as defined in Section 153 of Title 47 of the United States Code.

(l) “Prepaid MTS provider” means a telephone corporation, as defined in Section 234 of the Public Utilities Code, that provides prepaid mobile telephony services.

(m) “Retail transaction” means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a “purchase” means any transfer of title or possession, exchange, or barter, conditional or otherwise.

(n) “Seller” means a person that sells prepaid mobile telephony service to a person in a retail transaction.

SEC. 3. 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 time of sale, pursuant to this part, if the local agency entered 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 as required for the department to meet its obligations pursuant to subdivision (a) of Section 42101.6.

(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. 4. Section 42101.6 is added to the Revenue and Taxation Code, to read:

42101.6. (a) (1) The department shall post, for each local jurisdiction, the rate or rates of the local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted, not later than December 1 of each year, on its internet website. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting.

(2) The department shall also separately post on its internet website the individual rates for each of the individual local charges reported pursuant to Section 42101.5.

(3) Notwithstanding paragraph (1), if a local agency notifies the department pursuant to subdivision (d) of Section 42101.5 that the posted rate is inaccurate or it no longer imposes a local charge

or local charges or that the rate of its local charge or local charges has decreased, the department shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the department of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2016, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 of the Public Utilities Code shall not apply to prepaid mobile telephony services.

(4) A seller collecting the local charges pursuant to this part may rely upon the accuracy of the information posted on the department's internet website in collecting and remitting all amounts of local charges.

(b) Except for amounts retained pursuant to subdivision (c), and except as provided in subdivision (d) for a seller that is a direct seller, all amounts of local charges collected by sellers shall be remitted to the department pursuant to Sections 42103, 42103.1, and 42103.2.

(c) 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.

(d) A direct seller shall remit the local charges to the local jurisdiction or local agency imposing the local charge. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local agency imposing the local tax or other charge. The amounts remitted to the local jurisdiction or local agency imposing the local charge pursuant to this paragraph shall be deposited into the respective local jurisdiction or local agency account.

(e) A direct seller shall use the amounts posted by the department pursuant to subdivision (a) when determining what amounts to remit to each local jurisdiction or local agency.

(f) The amount of the local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller,

or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

(g) The local charge that is required to be collected by a seller and any amount not returned to the prepaid consumer of mobile telephony services that is not owed as part of the local charge, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the local charge, constitute debts owed by the seller jointly to this state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing that local charge.

(h) A seller that has collected any amount of local charges in excess of the amount imposed by this part and actually due from a prepaid consumer may refund that amount to the prepaid consumer, even though the amount has already been paid over to the department and no corresponding credit or refund has yet been secured. Any seller making a refund of any charge to a prepaid consumer may repay therewith the amount of the charges paid.

(i) (1) Every prepaid consumer of mobile telephony services in this state is liable for any local charges until they have been paid to this state, except that payment to a seller registered under this part relieves the prepaid consumer from further liability for the local charges. Any local charge collected from a prepaid consumer that has not been remitted to the department shall be a debt owed jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charge by the person required to collect and remit the local charge. Nothing in this part shall impose any obligation upon a seller to take any legal action to enforce the collection of the local charge imposed by this section.

(2) A credit shall be allowed against, but shall not exceed, the local charges imposed on any prepaid consumer of mobile telephony services by this part to the extent that the prepaid consumer has paid local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

(j) (1) A seller is relieved from liability to collect the local charges imposed by this part that became due and payable, insofar as the base upon which the charges are imposed is represented by accounts that have been found to be worthless and charged off for

income tax purposes by the seller or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A seller that has previously paid the charges may, under rules and regulations prescribed by the department, take as a deduction on its return the amount found worthless and charged off by the seller. If any of those accounts are thereafter, in whole or in part, collected by the seller, the amount so collected shall be included in the first return filed after its collection and the charges shall be paid with the return.

(2) The department may, by regulation, adopt other rules with respect to uncollected or worthless accounts it deems necessary to the fair and efficient administration of this part.

SEC. 5. Section 42101.7 of the Revenue and Taxation Code is amended to read:

42101.7. (a) Commencing January 1, 2017, a seller, other than a direct seller, with de minimis sales of prepaid mobile telephony services of less than fifteen thousand dollars (\$15,000) during the previous calendar year is not required to collect local charges pursuant to Section 42101.5. The Department of Finance shall annually review and adjust that de minimis sales threshold as necessary to minimize program administration costs and maintain revenues to support program administration and enforcement activities. Any adjustment of the de minimis sales threshold shall become operative on January 1 of the following calendar year. Nothing in this section prevents a seller from collecting and remitting the surcharge on a voluntary basis even if the seller meets the de minimis sales threshold.

(b) For purposes of this section, the de minimis sales threshold shall be based on the aggregate of all sales of prepaid mobile telephone services subject to the local charges at all retail locations operated by the seller and not the individual sales at each retail location operated by the seller.

SEC. 6. Section 42101.8 is added to the Revenue and Taxation Code, to read:

42101.8. (a) For purposes of this part, a retail transaction occurs in the state under any of the following circumstances:

(1) The prepaid consumer makes the retail transaction in person at a business location in the state (point-of-sale transaction).

(2) If paragraph (1) is not applicable, the prepaid consumer's address is in the state (known-address transaction). A

known-address transaction occurs in the state under any of the following circumstances:

(A) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.

(B) If the prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.

(C) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.

(3) If an address is not available to the seller to determine whether any of the circumstances in paragraph (2) exist, the transaction will be deemed to be a known-address transaction occurring in this state if the mobile telephone number is associated with a location in this state.

(b) (1) A retail transaction shall occur at only one location for purposes of determining local charges. If the retail transaction is a point-of-sale transaction, the consumption of, use of, or access to, the prepaid mobile telephony service shall be presumed to be at that location.

(2) If the retail transaction is a known-address transaction, the location shall be as determined in descending order beginning with subparagraph (A) of paragraph (2) of subdivision (a); if subparagraph (A) of that paragraph is inapplicable, then pursuant to subparagraph (B) of that paragraph; if both subparagraphs (A) and (B) of that paragraph are inapplicable, then subparagraph (C) of that paragraph; and if subparagraphs (A), (B), and (C) of that paragraph are inapplicable, then paragraph (3) of subdivision (a). In a known-address transaction, the consumption of, use of, or access to the prepaid mobile telephony service shall be presumed to be at the known address.

(c) (1) A seller that relies in good faith on information provided by the department to match the location of a point-of-sale transaction to the applicable local charges, that collects that amount from the prepaid consumer, and that remits the amount to the department in compliance with this part, shall not be liable for any additional local charges and shall not be required to refund any

amounts collected and paid to the department to the prepaid consumer.

(2) For a known-address transaction, the seller may collect the local charges that correspond to the five-digit postal ZIP Code of the prepaid consumer's address. A seller that, with due diligence and in good faith, relies on credible information to match the five-digit postal ZIP Code of the prepaid consumer's address to the applicable local charges amount, that collects that amount from the prepaid consumer, and that remits the amount to the department in compliance with this part, shall not be liable for any additional local charges and shall not be required to refund any amounts collected and paid to the department to the prepaid consumer, even if the five-digit postal ZIP Code of the prepaid consumer's address that the seller uses corresponds to more than one local charge.

SEC. 7. Section 42101.9 is added to the Revenue and Taxation Code, to read:

42101.9. (a) Except as provided in subdivisions (b) and (c), if prepaid mobile telephony services are sold in combination with mobile data services or any other services or products that are not subject to the local charges for a single price, then the local charges shall apply to the entire price unless the seller can identify the mobile data services and other services or products 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 telephone 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.

SEC. 8. Section 42103 of the Revenue and Taxation Code is amended to read:

42103. (a) (1) 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 pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) in the manner prescribed by this part, 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 charges imposed by this part, and references to “feepayer” shall include a person required to pay the local charges imposed by this part, which includes the sellers, who shall be required to register with the department.

(2) Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30, any person required, or that elects, to remit amounts due under Part 1 (commencing with Section 6001) by electronic funds transfer pursuant to Article 1.2 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall remit the local charges due under this section by electronic funds transfer.

(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 incurred for the administration and collection of local charges.

(c) (1) 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.

(2) The department may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any

emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(d) The department shall establish procedures to be used by a seller, including a direct seller, to document that a sale is not a retail transaction.

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

(f) 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.

(g) 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.

(h) For purposes of this part, any third-party contract under subdivision (g) 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.

(i) Except for those procedures established pursuant to subdivision (d) and the sharing of information pursuant to subdivision (f), this section does not apply to direct sellers.

SEC. 9. Section 42103.1 is added to the Revenue and Taxation Code, to read:

42103.1. The department shall establish remittance schedules and methods for payment of the local charges that use existing methods established under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)), including all of the following:

(a) The local charges, minus the amount retained by the seller pursuant to subdivision (c) of Section 42101.6, are due and payable to the department quarterly on or before the last day of the month following each calendar quarter.

(b) On or before the last day of the month following each calendar quarter, a return for the preceding calendar quarter shall be filed using electronic media with the department.

(c) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the department.

(d) This section applies only to those remittances of the local charges that are required to be remitted to the department pursuant to this part.

SEC. 10. Section 42103.2 is added to the Revenue and Taxation Code, to read:

42103.2. Every seller, except a seller that is not required to collect the local charges pursuant to Section 42101.7, shall register with the department. Nothing in this section prevents a seller from registering with the department on a voluntary basis to collect and remit the charges even if the seller meets the de minimis sales threshold provided by Section 42101.7. The department shall establish a method for registration of sellers under this part that uses the existing registration process for a seller's permit established pursuant to Section 6066 of the Sales and Use Tax Law (Part 1 (commencing with Section 6001)). Every application for registration shall be made upon a form prescribed by the department and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and any other information that the department

may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the department.

SEC. 11. Section 42105 of the Revenue and Taxation Code is amended to read:

42105. (a) The local jurisdiction or local agency that has adopted an ordinance to impose a local charge that applies to prepaid mobile telephony service shall be solely responsible for:

(1) Defending any claim regarding the validity of the ordinance in its application to prepaid mobile telephony service.

(2) Interpreting any provision of the ordinance, except to the extent specifically superseded by this statute.

(3) Responding to any claim for refund by a consumer arising under subdivision (b), (c), or (d). The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

(4) Certifying that the local jurisdiction's or local agency's ordinance applies the local charge to prepaid mobile telephony services and agreeing to indemnify and hold harmless the department, its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.

(5) Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.

(6) Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the local jurisdiction's or local agency's ordinance.

(b) A consumer may rebut the presumed location of the retail transaction to the city or county clerk of the local jurisdiction, as provided in subdivision (b) of Section 42101.8 by filing a claim and declaration under penalty of perjury on a form established by the city or county clerk of the local jurisdiction or local agency indicating the actual location of the retail sale. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.

(c) A consumer that is exempt from the local charge under the local enactment may file a claim for a refund from the local

jurisdiction or local agency in accordance with the refund provisions of the local enactment that allows the claim to be filed.

(d) In connection with any actions or claims relating to or arising from the invalidity of a local tax ordinance, in whole or in part, the seller shall not be liable to any consumer as a consequence of collecting the tax. In the event a local jurisdiction or local agency is ordered to refund the tax, it shall be the sole responsibility of the local jurisdiction or local agency to refund the tax. In any action seeking to enjoin collection of a local charge by a seller, in any action seeking declaratory relief concerning a local charge, in any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge, the sole necessary party defendant in the action shall be the local jurisdiction or local agency on whose behalf the local charge is collected, and the seller collecting the local charge shall not be named as a party in the action. There shall be no recovery from the state for the imposition of any unconstitutional or otherwise invalid local charge that is collected pursuant to this part.

SEC. 12. Section 42106 of the Revenue and Taxation Code is amended to read:

42106. (a) For purposes of this section:

(1) “Quarterly local charges” means the total amount of local charges transmitted by the department to a city, county, or city and county for a calendar quarter.

(2) “Refund” means the amount of local charges deducted by the department from a city’s, county’s, or city and county’s quarterly local charges in order to pay the city’s, county’s, or city and county’s share of a local charge refund due to one taxpayer.

(3) “Offset portion” means that portion of the refund that exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent of the city’s, county’s, or city and county’s quarterly local charges.

(b) Except as provided in subdivision (c), if the department has deducted a refund from a city’s, county’s, or city and county’s quarterly local charges which includes an offset portion, then the following provisions apply:

(1) Within three months after the department has deducted an offset portion, the city, county, or city and county may request the department to transmit the offset portion to the city, county, or city and county.

(2) As promptly as feasible after the department receives the city's, county's, or city and county's request, the department shall transmit to the city, county, or city and county the offset portion as part of the department's periodic transmittal of local charges.

(3) The department shall thereafter deduct a pro rata share of the offset portion from future transmittals of local charges to the city, county, or city and county over a period to be determined by the department, but not less than two calendar quarters and not more than eight calendar quarters, until the entire amount of the offset portion has been deducted.

(c) The department shall not transmit the offset portion of the refund to the city, county, or city and county if that transmittal would reduce or delay either the department's payment of the refund to the taxpayer or the department's periodic transmittals of local charges to other cities, counties, or city and county.

SEC. 13. Section 42107 of the Revenue and Taxation Code is amended to read:

42107. A local jurisdiction or local agency shall pay to the department its pro rata share of the department's cost of collection and administration.

SEC. 14. Section 42109 of the Revenue and Taxation Code is amended to read:

42109. The department shall annually prepare a report showing the amount of both reimbursed and unreimbursed costs incurred by it in administering the collection of local charges pursuant to this part.

SEC. 15. Section 42110 of the Revenue and Taxation Code is amended to read:

42110. (a) Notwithstanding Section 55381, it is unlawful for any person, other than an officer or employee of a county, city and county, city, or district, who obtains access to information contained in, or derived from, local charge records of the department pursuant to subdivision (b), to retain that information after that person's contract with the county, city and county, city, or district has expired.

(b) (1) When requested by resolution of the legislative body of any county, city and county, city, or district, the department shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the local charge records of the

department pertaining to the ascertainment of those local charges to be collected for the county, city and county, city, or district by the department pursuant to contract entered into between the department and the county, city and county, city, or district pursuant to this part. Except as otherwise provided in this section, this subdivision does not allow any officer, employee, or other person authorized or designated by a county, city and county, city, or district to examine any sales or transactions and use tax records of any taxpayer. The costs that are incurred by the department in complying with a request made pursuant to this subdivision shall be deducted by the department from those revenues collected by the department on behalf of the county, city and county, city, or district making the request.

(2) The resolution of the legislative body of the county, city and county, city, or district shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions:

(A) Has an existing contract with the county, city and county, city, or district to examine those local charge records.

(B) Is required by that contract to disclose information contained in, or derived from, those local charge records only to an officer or employee of the county, city and county, city, or district who is authorized by the resolution to examine the information.

(C) Is prohibited by that contract from performing consulting services for a seller during the term of that contract.

(D) Is prohibited by that contract from retaining the information contained in, or derived from, those local charge records, after that contract has expired.

(3) Information obtained by examination of department records pursuant to this subdivision shall be used only for purposes related to the collection of the local charges by the department pursuant to the contract, or for purposes related to other governmental functions of the county, city and county, city, or district set forth in the resolution.

(c) If the department believes that any information obtained pursuant to subdivision (b) has been disclosed to any person not authorized or designated by the resolution of the legislative body of the county, city and county, city, or district, or has been used for purposes not permitted by subdivision (b), the department may impose conditions on access to its local charge records that the

department considers reasonable, in order to protect the confidentiality of those records.

(d) Predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid local charges or amounts of local charges required to be collected, interest, and penalties.

SEC. 16. Section 42111 of the Revenue and Taxation Code is amended to read:

42111. This part shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

SEC. 17. 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.

Approved _____, 2020

Governor