

HOUSE BILL NO. 538

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATE EMERGENCY TELEPHONE SYSTEM LAWS; REVISING THE MEMBERSHIP AND DUTIES OF THE 9-1-1 ADVISORY COUNCIL; REVISING LAWS RELATED TO 9-1-1 PLANNING; REVISING LAWS RELATED TO THE COLLECTION AND DISTRIBUTION OF 9-1-1 FEES; REVISING MINIMUM RULEMAKING REQUIREMENTS; REVISING LAWS RELATED TO 9-1-1 GRANTS; AND AMENDING SECTIONS 10-4-105, 10-4-106, 10-4-107, 10-4-108, 10-4-201, 10-4-213, 10-4-214, 10-4-305, AND 10-4-306, MCA."

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

Section 1. Section 10-4-105, MCA, is amended to read:

"10-4-105. 9-1-1 advisory council. (1) There is a 9-1-1 advisory council.

(2) The council consists of 48 19 members appointed by the governor as follows:

- (a) the attorney general or the attorney general's designee, who serves as presiding officer of the council;
- (b) a representative of the department of justice, Montana highway patrol;
- (c) a representative of the Montana emergency medical services association;
- (d) three representatives of Montana telecommunications providers, including at least one wireless provider;
- (e) a representative of the Montana association of public safety communications officials;
- (f) two public safety answering point managers, one serving a population of less than 30,000 and one serving a population of greater than 30,000;
- (g) a representative of the department of military affairs, disaster and emergency services division;
- (h) a representative of the Montana association of chiefs of police;
- (i) a representative of the Montana sheriffs and peace officers association;

- 1 (j) a representative of the Montana state fire chiefs' association;
- 2 (k) a representative of the Montana state volunteer firefighters association;
- 3 (l) a representative of the Montana association of counties;
- 4 (m) a representative of the Montana league of cities and towns;
- 5 (n) a representative of the Montana chapter of the national emergency number association;
- 6 ~~(n)~~(o) the state librarian or the state librarian's designee; and
- 7 ~~(o)~~(p) the state director of Indian affairs provided for in 2-15-217.
- 8 (3) The council is attached to the department for administrative purposes only, as provided in 2-15-
- 9 121.
- 10 (4) The council shall, within its authorized budget, hold quarterly meetings.
- 11 (5) Council members shall serve without additional salary but are entitled to reimbursement for
- 12 travel expenses incurred while engaged in council activities as provided for in 2-18-501 through 2-18-503."

**Section 2.** Section 10-4-106, MCA, is amended to read:

**"10-4-106. 9-1-1 advisory council duties -- consultation by department.** The 9-1-1 advisory council shall:

- 17 (1) advise the department in its duty to allocate and distribute 9-1-1 fees in accordance with 10-4-
- 18 305 and to update the allocation and distribution in accordance with rules adopted pursuant to 10-4-108(3);
- 19 (2) provide recommendations to the department in determining grants awarded in accordance with
- 20 10-4-306; and
- 21 ~~(3) advise the department in the development of a statewide 9-1-1 plan; and~~
- 22 ~~(4)~~(3) advise the department on significant matters concerning 9-1-1 systems development and 9-1-1
- 23 services in the state of Montana, including rulemaking."

**Section 3.** Section 10-4-107, MCA, is amended to read:

**"10-4-107. Department duties and powers -- 9-1-1 planning.** (1) There is a 9-1-1 program administered by the department.

- 28 (2) The department shall:

- 1 (a) allocate and distribute 9-1-1 fees;
- 2 (b) update the allocation and distribution of 9-1-1 fees in accordance with 10-4-305 and rules
- 3 adopted pursuant to 10-4-108;
- 4 (c) provide grants in accordance with 10-4-306. In awarding the grants, the department shall
- 5 review and approve requests for funding in accordance with 10-4-306.
- 6 (d) monitor the expenditure of program funds for:
  - 7 (i) 9-1-1 purposes by local and tribal governments that host public safety answering points; and
  - 8 (ii) allowable uses of grant funds by entities;
- 9 (e) ~~establish~~ maintain a statewide 9-1-1 plan in accordance with subsection (3);
- 10 (f) staff and fund the administrative costs of the 9-1-1 advisory council established in 10-4-105;
- 11 (g) accept federal funds granted by congress or by executive order and gifts, grants, and
- 12 donations for the purposes of administering this chapter; and
- 13 (h) establish allowable uses of funds by local and tribal governments that host public safety
- 14 answering points that receive distributions pursuant to 10-4-305 and ensure that funds are expended only for
- 15 allowable uses.
- 16 (3) A statewide 9-1-1 plan must include:
  - 17 (a) to the maximum extent feasible the use of existing commercial communications infrastructure;
  - 18 and
  - 19 (b) 9-1-1 system standards and support efforts to migrate legacy technologies to next-generation
  - 20 9-1-1 technologies when appropriate and to provide for the implementation of future 9-1-1 technologies. Any
  - 21 standards adopted by the department for legacy 9-1-1 technologies or principles adopted for baseline next-
  - 22 generation 9-1-1 technologies must be:
    - 23 (i) flexible and graduated, while ensuring minimum service levels; and
    - 24 (ii) based on industry standards.
- 25 (4) The department, in fulfilling its duties pursuant to subsection (2), may request necessary
- 26 information from local and tribal governments. If a local or tribal government does not comply with the request,
- 27 the department may withhold funding distributions as provided for in 10-4-109."

28

1           **Section 4.** Section 10-4-108, MCA, is amended to read:

2           **"10-4-108. Rulemaking authority.** (1) The department shall adopt rules to implement the provisions  
3 of this chapter. The rules must include but are not limited to:

4           (a)     distribution procedures for funding authorized in 10-4-305(1);

5           (b)     procedures for grant funding authorized in 10-4-306. The rules for grant funding must include  
6 but are not limited to:

7           (i)     eligibility requirements for entities applying for grants;

8           (ii)    criteria for awarding grants; and

9           (iii)   reporting procedures for grant recipients.

10          (c)     postdisbursement activities by the department to monitor the use of funding by entities,  
11 including:

12          (i)     reporting requirements; and

13          (ii)    procedures for repayment of funds expended on activities determined not to meet eligibility  
14 requirements.

15          (2)     The department shall adopt rules including but not limited to:

16          (a)     technology standards, based on industry standards and a statewide 9-1-1 plan, to ensure that  
17 public safety answering points meet minimum 9-1-1 services levels; and

18          (b)     baseline next-generation 9-1-1 principles to facilitate the appropriate deployment of baseline  
19 next-generation 9-1-1.

20          (3)     (a) ~~Before January 1, 2022, the~~ The department shall adopt rules for the allocation and  
21 distribution of funds in the account provided for in 10-4-304(2)(a) in accordance with ~~10-4-305(2) and (3)~~ 10-4-  
22 305 to local and tribal government entities that host public safety answering points.

23          (b)     The rules adopted for allocation must ~~be based on the official final decennial census figures~~  
24 ~~and must~~ ensure that each local and tribal government entity that hosts a public safety answering point receives  
25 funding. The allocation must account for:

26          (i)     historic allocations provided to a local or tribal government entity that hosts a public safety  
27 answering point;

28          (ii)    the population of counties, cities, Indian reservations, or other government entities served by

1 the public safety answering point;

2 (iii) population trends; ~~and~~

3 ~~(iv)~~ call volume of public safety answering points, when that data is available; and

4 ~~(iv)(v)~~ other factors determined by the department, in consultation with the 9-1-1 advisory council  
5 provided for in 10-4-105, critical to the funding allocation.

6 (c) The department's allocation may not distribute funds in a manner that discourages public safety  
7 answering points from consolidating or combining.

8 (4) The department shall adopt rules in accordance with the Montana Administrative Procedure Act  
9 provided for in Title 2, chapter 4, to implement the provisions of this section."

10

11 **Section 5.** Section 10-4-201, MCA, is amended to read:

12 **"10-4-201. Fees imposed for 9-1-1 services.** (1) Except as provided in 10-4-202 [and for the  
13 purpose of 10-4-304(5)]:

14 (a) for 9-1-1 services, which do not include prepaid wireless services, ~~included in subsection (1)(e),~~  
15 a fee of ~~75 cents~~ \$1 a month ~~per~~ for each access line on each subscriber in the state is imposed ~~for the~~  
16 ~~administration of 9-1-1 programs in accordance with 10-4-305; and~~

17 ~~(b) a fee of 25 cents a month per access line on each subscriber as defined in 10-4-101(21)(a) in~~  
18 ~~the state is imposed for the grants provided in accordance with 10-4-306; and~~

19 ~~(e)(b)~~ for prepaid wireless 9-1-1 services, a fee of \$1 ~~per~~ for each transaction in the state is imposed  
20 on charges for prepaid wireless services.

21 (2) The subscriber paying for an access line or prepaid wireless service is liable for the fees  
22 imposed by this section.

23 (3) (a) Except as provided in subsection (3)(b), the provider shall collect the fees. The amount of  
24 the fees collected by the provider is considered payment by the subscriber for that amount of fees.

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

28 (4) Any return made by the provider or seller collecting the fees is prima facie evidence of

1 payments by the subscribers of the amount of fees indicated on the return. (Bracketed language in subsection  
2 (1) terminates July 1, 2031--sec. 8, Ch. 200, L. 2021.)"

3

4 **Section 6.** Section 10-4-213, MCA, is amended to read:

5 **"10-4-213. Collection of charge -- prepaid wireless services --~~deduction.~~** (1) (a) Except as  
6 provided in subsections (1)(d) and (3), a seller shall collect the fee imposed pursuant to ~~10-4-201(1)(c)~~ 10-4-  
7 201(1)(b) from the subscriber for each transaction occurring in Montana.

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

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

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

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

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

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

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

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

23 (2) ~~(a) A seller may deduct and retain the entirety of the first quarter's fees of 2022.~~

24 ~~(b) —~~Beginning in the second quarter of 2022, a seller may deduct and retain 2% of the fee for each  
25 transaction collected in accordance with ~~10-4-201(1)(c)~~ 10-4-201(1)(b).

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

28

1           **Section 7.** Section 10-4-214, MCA, is amended to read:

2           **"10-4-214. Prepaid wireless services -- liability.** (1) The prepaid wireless 9-1-1 fee collected  
3 pursuant to ~~10-4-204(1)(c)~~ 10-4-201(1)(b) is the liability of the consumer and not of the seller, except that the  
4 seller is liable to remit the prepaid wireless 9-1-1 fee that the seller collects from consumers to the department  
5 of revenue in accordance with this chapter, including all fees that the seller collects when the amount of the fee  
6 is not separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller  
7 in accordance with 10-4-213(1)(b).

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

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

16           (3)     The prepaid wireless 9-1-1 fee collected pursuant to ~~10-4-204(1)(c)~~ 10-4-201(1)(b) is the only  
17 9-1-1 funding obligation imposed on prepaid wireless services in Montana, and no tax, fee, surcharge, or other  
18 charge may be imposed for 9-1-1 funding purposes with respect to the sale, purchase, use, or provision of  
19 prepaid wireless services."  
20

21           **Section 8.** Section 10-4-305, MCA, is amended to read:

22           **"10-4-305. Distribution of 9-1-1 systems account by department.** ~~(1) Beginning July 1, 2018, and~~  
23 ~~for each quarter after that until the first quarter of the 2023 fiscal year, the department shall distribute the total~~  
24 ~~quarterly balance of the account provided for in 10-4-304(2)(a) as follows:~~

25           (a) — each local and tribal government entity that hosts a public safety answering point must receive  
26 an allocation of the total quarterly balance of the account equal in proportion to the quarterly share received by  
27 the local and tribal government entity that hosts the public safety answering point during the 2017 fiscal year;

28           (b) — each local and tribal government entity that hosts a public safety answering point must receive

1 an allocation in accordance with subsection (1)(a). The allocation may vary from the amount distributed during  
 2 the 2017 fiscal year based on the amount collected by the department of revenue in accordance with 10-4-  
 3 201(1)(a) and (1)(c).

4 (2)(1) ~~Beginning July 1, 2022, and in accordance with subsection (3), the~~ The department shall  
 5 allocate and distribute the total quarterly balance of the account provided for in 10-4-304(2)(a) to local and tribal  
 6 government entities that host public safety answering points based on rules adopted by the department in  
 7 accordance with 10-4-108(3).

8 (3)(2) ~~Within 1 year after the official final decennial census figures are available, the~~ The department  
 9 shall update the rules establishing the quarterly allocation and distribution provided for in subsection (2) (1) and  
 10 allocate and distribute the quarterly balance ~~for each quarter after that until the next update~~ as set forth in the  
 11 rules."

12

13 **Section 9.** Section 10-4-306, MCA, is amended to read:

14 **"10-4-306. 9-1-1 grants.** (1) The department shall, in consultation with the 9-1-1 advisory council  
 15 created pursuant to 10-4-105, award competitive grants annually using the account established pursuant to 10-  
 16 4-304(2)(b) for private telecommunications providers and for local and tribal government entities that host public  
 17 safety answering points. ~~Beginning July 1, 2018, grants~~ Grants must be awarded to private telecommunications  
 18 providers or to local or tribal government entities that host public safety answering points or to all in accordance  
 19 with this section and with rules adopted by the department in accordance with 10-4-108.

20 (2) In accordance with subsection (3), grants may be awarded to private telecommunications  
 21 providers and to local or tribal government entities that host public safety answering points for:

- 22 (a) emergency telecommunications systems plans;
- 23 (b) project feasibility studies or project plans;
- 24 (c) the implementation, operation, and maintenance of 9-1-1 systems, equipment, devices, and
- 25 data; and
- 26 (d) the purchase of services that support 9-1-1 systems.

27 (3) In awarding grants, preference must be given to applications in the following order of priority:

- 28 (a) requests by private telecommunications providers or by local or tribal government entities that

1 host public safety answering points by working with a private telecommunications provider; and

2 (b) requests by local or tribal government entities that host public safety answering points.

3 (4) Nothing in this section prevents a local or tribal government entity that hosts a public safety

4 answering point in accordance with this section from:

5 (a) providing grant money received by the local or tribal government entity to a private

6 telecommunications provider for 9-1-1 purposes; or

7 (b) collaborating with another local or tribal government entity on a joint grant application."

8 - END -