

## **BILL ANALYSIS**

C.S.H.B. 3359  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The 9-1-1 emergency communication system has been a remarkable success in Texas and in the nation as a whole. Emergency services are funded through assessments placed on monthly bills for most telecommunications services. An estimated two million Texans use prepaid service, which is typically purchased at a retail location or online in specific dollar increments. The traditional means of assessing an emergency services fee cannot be applied to prepaid service because there is no monthly bill provided to the customer by a service provider. State law does not currently permit the imposition of an emergency services fee on prepaid service.

C.S.H.B. 3359 authorizes a prepaid 9-1-1 emergency services fee on each retail transaction of prepaid wireless telecommunications service. The bill establishes the means by which the seller of such a service collects the fee from a consumer at the point of sale and the use of the fee. The bill requires the Sunset Advisory Commission in its report to the 82nd Legislature and as part of its review of the Commission on State Emergency Communications to include the effect of the prepaid wireless 9-1-1 emergency services fee. The bill authorizes certain counties to use collected prepaid wireless 9-1-1 emergency services fees for costs relating to designing a 9-1-1 system or a public safety answering point and includes certain portions of the revenue from such fees in the amounts the Commission on State Emergency Communications is required to provide to each regional planning commission for 9-1-1 emergency services.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commission on State Emergency Communications in SECTION 9 of this bill.

### **ANALYSIS**

C.S.H.B. 3359 amends the Health and Safety Code to require a prepaid wireless 9-1-1 emergency services fee to be collected by a seller of prepaid wireless telecommunications service from a consumer of such a service at the time of and with respect to each retail transaction of prepaid wireless telecommunications service occurring in Texas. The bill requires the amount of the fee to be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer by the seller. The bill establishes that the fee is two percent of the cost of each prepaid wireless telecommunications service purchased, regardless of whether the service was purchased in person, by telephone, through the Internet, or by any other method, and provides that each service purchased is a separate item for purposes of calculating the fee. The bill requires a retail transaction that is effected in person by a consumer at a business location of the seller to be treated as occurring in Texas if that business location is in Texas. The bill requires any other retail transaction, including a transaction over the Internet or via telecommunications service, to be treated as occurring in Texas if the retail transaction would be treated as occurring in Texas under state sales and use tax provisions.

C.S.H.B. 3359 establishes that the fee is the liability of the consumer and not of the seller or of

any provider, except that the seller is liable to remit all prepaid wireless service fees that the seller collects from consumers, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on a document provided to the consumer by the seller. The bill specifies that a prepaid wireless 9-1-1 emergency services fee is in addition to state sales and use tax. The bill prohibits the amount of the fee, whether or not such amount is separately stated on a document provided to the consumer by the seller, from being included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of the state, or any intergovernmental agency. The bill authorizes a seller to deduct and retain one percent of fees that the seller collects to offset its costs in administering the fee.

C.S.H.B. 3359 requires the comptroller of public accounts to establish procedures for a seller to document that a sale is not a retail transaction and requires the procedures to substantially conform to procedures for documenting a sale for resale under state sales and use tax provisions. The bill establishes that a provider or seller of prepaid wireless telecommunications service is not liable for damages to any person resulting from or incurred in connection with the provision of or the failure to provide 9-1-1 emergency service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 9-1-1 emergency service, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

C.S.H.B. 3359 establishes that a provider or seller of prepaid wireless telecommunications service is not liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to certain investigative or law enforcement officers or entities, with certain exceptions, or for the release of certain information furnished by the provider or seller in providing or selling 9-1-1 emergency service. The bill entitles each such provider and seller of such prepaid services to any other exemption from certain other liability, if any, that is provided to wireless service providers. The bill establishes that information that a provider or seller of prepaid wireless telecommunications service is required to furnish to a governmental entity in providing or selling 9-1-1 emergency service is confidential and is exempt from disclosure under state public information law, and authorizes otherwise confidential information to be released only for certain budgetary purposes.

C.S.H.B. 3359 establishes that a prepaid wireless 9-1-1 emergency services fee is administered, imposed, collected, and enforced in the same manner as the state sales and use tax and makes certain provisions that apply to the state sales tax applicable to this fee. The bill requires the comptroller to deposit the money from the fees, other than penalties and interest, to the credit of the 9-1-1 services fee account in the general revenue fund after deducting an amount not greater than 10 percent of collected charges. The bill provides that money the comptroller collects for the fees remains in a trust fund with the state treasury until the money is deposited to the credit of the 9-1-1 services fee account.

C.S.H.B. 3359 requires money collected from the fees to be used only for services related to 9-1-1 and emergency services, including automatic number identification and automatic location information services. The bill requires the commission, not later than the 15th day after the last day of the month in which the money is collected, to distribute to each emergency communications district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population in the area served by the district bears to the population of Texas. The bill requires the remaining money to be deposited to the 9-1-1 services fee account in the general revenue fund. The bill requires the commission by rule to annually determine the percentage of collected charges, not to exceed 10 percent, that shall be deducted by the comptroller and allocated as if collected under Health and Safety Code provisions relating to the 9-1-1 equalization surcharge on customers receiving intrastate long-distance service.

C.S.H.B. 3359 requires that the prepaid wireless 9-1-1 emergency services fee be the only 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications service in Texas, and prohibits a tax, fee, surcharge, or other charge from being imposed by the state, any political subdivision of the state, or any other governmental agency for 9-1-1 funding purposes on any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service. The bill specifies that the existing emergency service fee for wireless telecommunications connections in the Health and Safety Code applies to a wireless telecommunications service that is not subject to the prepaid wireless 9-1-1 emergency services fee.

C.S.H.B. 3359 requires the Sunset Advisory Commission to include in its report to the 82nd Legislature and as part of its review of the Commission on State Emergency Communications the effect of prepaid wireless 9-1-1 emergency services fees on revenues collected and the extent to which those revenues increased or decreased total revenues attributable to wireless telecommunications services, and whether the total of all revenues received from 9-1-1 services fees adequately fund public safety in Texas at the time the review is conducted and whether the 9-1-1 services fees will continue to adequately fund public safety in future years.

C.S.H.B. 3359 authorizes the collected prepaid wireless 9-1-1 emergency services fees in the county that has the highest population within a region subject to those fees, or in a county subject to those fees with a population of at least 700,000, to be used for any costs considered necessary by the commission and attributable to designing a 9-1-1 system, or obtaining and maintaining equipment and personnel necessary to establish and operate a public safety answering point and related operations or other related answering points and operations.

C.S.H.B. 3359 includes in the separately computed amounts the commission is required to provide to each regional planning commission, in making contracts for 9-1-1 service, an amount of money equal to the total of the revenue from the prepaid wireless 9-1-1 emergency services fee that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of Texas.

C.S.H.B. 3359 defines "consumer," "prepaid wireless 9-1-1 emergency services fee," "prepaid wireless telecommunications service," "retail transaction," "seller," and "wireless telecommunications service," for purposes of the prepaid wireless 9-1-1 emergency services fee. The bill excludes a prepaid wireless telecommunications service, only to the extent of the sale or provision of the service, from the definition of "wireless service provider" for purposes of provisions relating to the state administration of emergency communications.

### **EFFECTIVE DATE**

January 1, 2010.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3359 removes a definition included in the original for the term "person." The substitute differs from the original by including in the definition of "prepaid wireless telecommunications service" a wireless telecommunications service that is sold on a time period basis.

C.S.H.B. 3359 differs from the original by establishing that the prepaid wireless 9-1-1 emergency services fee is two percent of the cost of each prepaid wireless telecommunications service purchased regardless of the method of purchase and providing that each service purchased is a separate item for purposes of calculating the fee, whereas the original establishes the fee as 50 cents per retail transaction.

C.S.H.B. 3359 differs from the original by requiring the comptroller of public accounts to credit the fees to the 9-1-1 services fee account in the general revenue fund after deducting an amount not greater than 10 percent of collected charges, whereas the original requires the crediting after a deduction equal to two percent of collected charges, to be retained by the comptroller as reimbursement for the costs of administering the collection and remittance of the fees and deducting an amount not greater than 13 percent of collected charges.

C.S.H.B. 3359 adds a provision not in the original excluding a prepaid wireless telecommunications service from the definition of "wireless service provider" only to the extent of the sale or provision of the service.

C.S.H.B. 3359 adds a provision not in the original requiring the Sunset Advisory Commission, in its report to the 82nd Legislature, and as part of its review of the Commission on State Emergency Communications, to include the effect of the prepaid wireless 9-1-1 emergency services fee.

C.S.H.B. 3359 adds a provision not in the original authorizing certain counties to use collected prepaid wireless 9-1-1 emergency services fees for costs relating to designing a 9-1-1 system or a public safety answering point.

C.S.H.B. 3359 adds a provision not in the original including certain portions of the revenue from the prepaid wireless 9-1-1 emergency services fee in the amounts the Commission on State Emergency Communications is required to provide to each regional planning commission for 9-1-1 emergency services.

C.S.H.B. 3359 differs from the original by changing the effective date from September 1, 2009, to January 1, 2010.