

By: McClendon, Rodriguez

H.B. No. 3359

Substitute the following for H.B. No. 3359:

By: King of Parker

C.S.H.B. No. 3359

A BILL TO BE ENTITLED

AN ACT

relating to a uniform and statewide 9-1-1 emergency services fee on the retail sale of prepaid wireless telecommunications services to consumers.

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

SECTION 1. Section 771.001(12), Health and Safety Code, is amended to read as follows:

(12) "Wireless service provider" means a provider of commercial mobile service under Section 332(d), Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

(A) a service whose users do not have access to 9-1-1 service;

(B) a communication channel used only for data transmission;

(C) a wireless roaming service or other nonlocal radio access line service; ~~[or]~~

(D) a private telecommunications service; or

(E) a prepaid wireless telecommunications

1 service, as defined by Section 771.081, only to the extent of the
2 sale or provision of the service.

3 SECTION 2. Section 771.032, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 771.032. APPLICATION OF SUNSET ACT. (a) The
6 Commission on State Emergency Communications is subject to Chapter
7 325, Government Code (Texas Sunset Act). Unless continued in
8 existence as provided by that chapter, the commission is abolished
9 and this chapter expires September 1, 2011.

10 (b) As part of the Sunset Advisory Commission's review under
11 Subsection (a), the Sunset Advisory Commission, in its report to
12 the 82nd Legislature, shall include:

13 (1) the effect of the prepaid wireless 9-1-1 emergency
14 services fee on revenues collected and the extent to which those
15 revenues increased or decreased total revenues attributable to
16 wireless telecommunications services; and

17 (2) whether the total of all revenues received from
18 9-1-1 services fees adequately fund public safety in this state at
19 the time the review is conducted and whether the 9-1-1 services fees
20 will continue to adequately fund public safety in future years.

21 SECTION 3. Section 771.056(d), Health and Safety Code, is
22 amended to read as follows:

23 (d) If the commission approves the plan, it shall allocate
24 to the region from the money collected under Sections 771.071,
25 771.0711, ~~[and]~~ 771.072, and 771.082 and appropriated to the
26 commission the amount that the commission considers appropriate to
27 operate 9-1-1 service in the region according to the plan and

contracts executed under Section 771.078.

SECTION 4. Section 771.075, Health and Safety Code, is amended to read as follows:

Sec. 771.075. USE OF REVENUE. Except as provided by Section 771.0751, 771.0753, 771.072(e), 771.072(f), ~~[or]~~ 771.073(e), or 771.082(g), fees and surcharges collected under this subchapter and Subchapter D-1 may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the commission.

SECTION 5. Subchapter D, Chapter 771, Health and Safety Code, is amended by adding Section 771.0753 to read as follows:

Sec. 771.0753. USE OF PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under Subchapter D-1 in:

(1) the county that has the highest population within a region subject to Subchapter D-1; or

(2) a county subject to Subchapter D-1 with a population of at least 700,000.

(b) In addition to use authorized or required by this subchapter, fees collected under Subchapter D-1 may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and

1 operations.

2 SECTION 6. Sections 771.077(a), (d), and (e), Health and
3 Safety Code, are amended to read as follows:

4 (a) The comptroller may establish collection procedures to
5 collect past due amounts and may recover the costs of collection
6 from a service provider or business service user that fails to
7 timely deliver the fees and the equalization surcharge to the
8 comptroller. Subtitles A and B, Title 2, Tax Code, apply to the
9 administration and collection of amounts by the comptroller under
10 this subchapter. Section 771.084 applies to the administration and
11 collection of amounts by the comptroller under Subchapter D-1.

12 (d) The comptroller shall:

13 (1) remit to the commission money collected under this
14 section for fees provided by Section 771.0711 and associated late
15 penalties;

16 (2) deposit to the 9-1-1 services fee account any
17 money collected under this section for fees provided by Section
18 771.071 and associated late penalties; ~~and~~

19 (3) deposit to the account as authorized by Section
20 771.072 any money collected under this section for fees provided by
21 Section 771.072 and associated late penalties; and

22 (4) remit to the commission any money collected under
23 this section for fees provided by Section 771.082 and associated
24 late penalties.

25 (e) The commission shall:

26 (1) deposit or distribute the money remitted under
27 Subsection (d)(1) as Section 771.0711 provides for fees received

1 under that section; ~~and~~

2 (2) distribute the money remitted under Subsection
3 (d)(2) and appropriated to the commission under contracts as
4 provided by Section 771.078(b)(1); and

5 (3) deposit or distribute the money remitted under
6 Subchapter D-1 as Section 771.082 provides for fees received under
7 that section.

8 SECTION 7. Section 771.078(b), Health and Safety Code, is
9 amended to read as follows:

10 (b) In making contracts under this section, the commission
11 shall ensure that each regional planning commission receives money
12 for 9-1-1 service in three ~~two~~ separately computed amounts as
13 provided by this subsection. The commission must provide each
14 regional planning commission with:

15 (1) an amount of money equal to the total of the
16 revenue from the emergency service fees collected under Section
17 771.071 that is deposited in the treasury and appropriated to the
18 commission multiplied by a fraction, the numerator of which is the
19 amount of those fees collected from the region and the denominator
20 of which is the total amount of those fees collected in this state;
21 ~~and~~

22 (2) an amount of money equal to the total of the
23 revenue from the emergency service fee for wireless
24 telecommunications connections under Section 771.0711 that is
25 deposited in the treasury and appropriated to the commission
26 multiplied by a fraction, the numerator of which is the population
27 of the region and the denominator of which is the population of this

1 state; and

2 (3) an amount of money equal to the total of the
3 revenue from the prepaid wireless 9-1-1 emergency services fee
4 under Section 771.082 that is deposited in the treasury and
5 appropriated to the commission multiplied by a fraction, the
6 numerator of which is the population of the region and the
7 denominator of which is the population of this state.

8 SECTION 8. Section 771.079(b), Health and Safety Code, is
9 amended to read as follows:

10 (b) The account consists of:

11 (1) fees deposited in the fund as provided by Sections
12 771.071, ~~[and]~~ 771.0711, and 771.082; and

13 (2) notwithstanding Section 404.071, Government Code,
14 all interest attributable to money held in the account.

15 SECTION 9. Chapter 771, Health and Safety Code, is amended
16 by adding Subchapter D-1 to read as follows:

17 SUBCHAPTER D-1. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE

18 Sec. 771.081. DEFINITIONS. In this subchapter:

19 (1) "Consumer" means a person who purchases prepaid
20 wireless telecommunications service in a retail transaction.

21 (2) "Prepaid wireless 9-1-1 emergency services fee"
22 means the fee a seller collects from a consumer in the amount
23 required under Section 771.082.

24 (3) "Prepaid wireless telecommunications service"
25 means a wireless telecommunications service that allows a caller to
26 access 9-1-1 emergency communications services that is paid for in
27 advance at the time of purchase and that is sold:

1 (A) in predetermined units or dollars, the number
2 of which declines with use in a known amount; or

3 (B) on a time period basis.

4 (4) "Retail transaction" means an individual purchase
5 of a prepaid wireless telecommunications service from a seller for
6 any purpose other than resale.

7 (5) "Seller" means a person who sells prepaid wireless
8 telecommunications service to any person. The term includes
9 "seller" and "retailer" as defined by Section 151.008, Tax Code.

10 (6) "Wireless telecommunications service" means
11 commercial mobile radio service as defined by 47 C.F.R. Section
12 20.3.

13 Sec. 771.082. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES
14 FEE. (a) A prepaid wireless 9-1-1 emergency services fee shall be
15 collected by the seller from the consumer at the time of and with
16 respect to each retail transaction of prepaid wireless
17 telecommunications service occurring in this state. The amount of
18 the prepaid wireless 9-1-1 emergency services fee shall be either
19 separately stated on an invoice, receipt, or other similar document
20 that is provided to the consumer by the seller, or otherwise
21 disclosed to the consumer by the seller.

22 (b) The prepaid wireless 9-1-1 emergency services fee is two
23 percent of the cost of each prepaid wireless telecommunications
24 service purchased, regardless of whether the service was purchased
25 in person, by telephone, through the Internet, or by any other
26 method. Each service purchased is a separate item for purposes of
27 calculating a fee under this subsection.

1 (c) For purposes of Subsection (a), a retail transaction
2 that is effected in person by a consumer at a business location of
3 the seller shall be treated as occurring in this state if that
4 business location is in this state. Any other retail transaction,
5 including a transaction over the Internet or via telecommunications
6 service, shall be treated as occurring in this state for purposes of
7 Subsection (a) if the transaction would be treated as occurring in
8 this state under Section 151.061, Tax Code.

9 (d) The prepaid wireless 9-1-1 emergency services fee is the
10 liability of the consumer and not of the seller or of any provider,
11 except that the seller shall be liable to remit all prepaid wireless
12 service fees that the seller collects from consumers as provided by
13 Section 771.084, including all such charges that the seller is
14 deemed to collect where the amount of the charge has not been
15 separately stated on an invoice, receipt, or other similar document
16 provided to the consumer by the seller.

17 (e) The fee imposed under this subchapter is in addition to
18 the taxes imposed under Chapter 151, Tax Code.

19 (f) The amount of the prepaid wireless 9-1-1 emergency
20 services fee that is collected by a seller from a consumer, whether
21 or not such amount is separately stated on an invoice, receipt, or
22 other similar document provided to the consumer by the seller,
23 shall not be included in the base for measuring any tax, fee,
24 surcharge, or other charge that is imposed by this state, any
25 political subdivision of this state, or any intergovernmental
26 agency.

27 (g) A seller may deduct and retain one percent of prepaid

1 wireless 9-1-1 emergency services fees that it collects to offset
2 its costs in administering this fee.

3 Sec. 771.083. EXCEPTIONS TO APPLICABILITY OF CHAPTER AND
4 LIMITATIONS OF LIABILITY. (a) The comptroller shall establish
5 procedures for a seller to document that a sale is not a retail
6 transaction under this subchapter. The procedures shall
7 substantially conform to procedures for documenting a sale for
8 resale under Chapter 151, Tax Code.

9 (b) A provider or seller of prepaid wireless
10 telecommunications service is not liable for damages to any person
11 resulting from or incurred in connection with the provision of, or
12 the failure to provide, 9-1-1 emergency service, or for identifying
13 or failing to identify the telephone number, address, location, or
14 name associated with any person or device that is accessing or
15 attempting to access 9-1-1 emergency service, unless the act or
16 omission proximately causing the claim, damage, or loss constitutes
17 gross negligence, recklessness, or intentional misconduct.

18 (c) A provider or seller of prepaid wireless
19 telecommunications service is not liable for damages to any person
20 resulting from or incurred in connection with the provision of any
21 lawful assistance to any investigative or law enforcement officer
22 of the United States, this or any other state, or any political
23 subdivision of this or any other state in connection with any lawful
24 investigation or other law enforcement activity by such
25 investigative or law enforcement officer unless the act or omission
26 proximately causing the claim, damage, or loss constitutes gross
27 negligence, recklessness, or intentional misconduct.

1 (d) Information that a provider or seller of prepaid
2 wireless telecommunications service is required to furnish to a
3 governmental entity in providing or selling 9-1-1 emergency service
4 is confidential and exempt from disclosure under Chapter 552,
5 Government Code. A provider or seller of prepaid wireless
6 telecommunications service is not liable to any person who uses a
7 9-1-1 emergency service created under this chapter for the release
8 of information furnished by the provider or seller of prepaid
9 wireless telecommunications service in providing or selling 9-1-1
10 emergency service. Information that is confidential under this
11 section may be released only for budgetary calculation purposes and
12 only in aggregate form so that no provider-specific or
13 seller-specific information may be extrapolated.

14 (e) In addition to the exemption from liability provided by
15 Subsections (b), (c), and (d), each provider and seller of prepaid
16 wireless telecommunications service is entitled to any other
17 exemption from liability under this chapter, if any, that is
18 provided to wireless service providers.

19 Sec. 771.084. APPLICATION OF PROVISIONS OF TAX CODE.
20 Except as otherwise provided by this subchapter:

21 (1) the fee imposed by this subchapter is
22 administered, imposed, collected, and enforced in the same manner
23 as a tax under Chapter 151, Tax Code, is administered, imposed,
24 collected, and enforced; and

25 (2) the provisions applicable to the sales tax imposed
26 under Subchapter C, Chapter 151, Tax Code, apply to the fee imposed
27 by this subchapter.

1 Sec. 771.085. ALLOCATION OF FEE. (a) After deducting an
2 amount not greater than 10 percent of collected charges, as
3 determined under Subsection (c), the comptroller shall deposit the
4 money from the fees imposed by this subchapter, other than
5 penalties and interest, to the credit of the 9-1-1 services fee
6 account in the general revenue fund. Until deposited to the credit
7 of the 9-1-1 services fee account as required by Subsection (b),
8 money the comptroller collects under this subchapter remains in a
9 trust fund with the state treasury.

10 (b) Money collected under this subchapter may be used only
11 for services related to 9-1-1 and emergency services, including
12 automatic number identification and automatic location information
13 services. Not later than the 15th day after the last day of the
14 month in which the money is collected, the commission shall
15 distribute to each emergency communication district that does not
16 participate in the state system a portion of the money that bears
17 the same proportion to the total amount collected that the
18 population in the area served by the district bears to the
19 population of the state. The remaining money collected under this
20 subchapter shall be deposited to the 9-1-1 services fee account in
21 the general revenue fund.

22 (c) The commission shall annually determine by rule the
23 percentage of collected charges, not to exceed 10 percent, that
24 under Subsection (a) shall be deducted by the comptroller and
25 allocated as if collected under Section 771.072.

26 Sec. 771.086. EXCLUSIVITY AND APPLICABILITY OF PREPAID
27 WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) The prepaid wireless

1 emergency services fee shall be the only 9-1-1 funding obligation
2 imposed with respect to prepaid wireless telecommunications
3 service in this state, and no tax, fee, surcharge, or other charge
4 shall be imposed by this state, any political subdivision of this
5 state, or any intergovernmental agency, for 9-1-1 funding purposes,
6 on any provider, seller, or consumer with respect to the sale,
7 purchase, use, or provision of prepaid wireless telecommunications
8 service.

9 (b) The emergency service fee for wireless
10 telecommunications connections under Section 771.0711 applies to
11 wireless telecommunications service that is not subject to the
12 prepaid wireless 9-1-1 emergency services fee under this
13 subchapter.

14 SECTION 10. This Act takes effect January 1, 2010.