

By: McClendon

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. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 163 to read as follows:

CHAPTER 163. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE

Sec. 163.001. DEFINITIONS. In this chapter:

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

(2) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(3) "Prepaid wireless 9-1-1 emergency services fee" means the fee a seller collects from a consumer in the amount required under Section 163.002.

(4) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to access 9-1-1 emergency communications services that is paid for in advance at the time of purchase and that is sold in predetermined units or dollars, the number of which declines with use in a known amount.

(5) "Retail transaction" means an individual purchase

1 of a prepaid wireless telecommunications service from a seller for
2 any purpose other than resale.

3 (6) "Seller" means a person who sells prepaid wireless
4 telecommunications service to any person. The term includes
5 "seller" and "retailer" as defined by Section 151.008.

6 (7) "Wireless telecommunications service" means
7 commercial mobile radio service as defined by 47 C.F.R. Section
8 20.3.

9 Sec. 163.002. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES
10 FEE. (a) Beginning on January 1, 2010, a prepaid wireless 9-1-1
11 emergency services fee shall be collected by the seller from the
12 consumer at the time of and with respect to each retail transaction
13 of prepaid wireless telecommunications service occurring in this
14 state. The amount of the prepaid wireless 9-1-1 emergency services
15 fee shall be either separately stated on an invoice, receipt, or
16 other similar document that is provided to the consumer by the
17 seller, or otherwise disclosed to the consumer by the seller.

18 (b) The prepaid wireless 9-1-1 emergency services fee is 50
19 cents per retail transaction.

20 (c) For purposes of Subsection (a), a retail transaction
21 that is effected in person by a consumer at a business location of
22 the seller shall be treated as occurring in this state if that
23 business location is in this state. Any other retail transaction,
24 including a transaction over the Internet or via telecommunications
25 service, shall be treated as occurring in this state for purposes of
26 Subsection (a) if the retail transaction would be treated as
27 occurring in this state under Chapter 151.

1 (d) The prepaid wireless 9-1-1 emergency services fee is the
2 liability of the consumer and not of the seller or of any provider,
3 except that the seller shall be liable to remit all prepaid wireless
4 service fees that the seller collects from consumers as provided by
5 Section 163.004, including all such charges that the seller is
6 deemed to collect where the amount of the charge has not been
7 separately stated on an invoice, receipt, or other similar document
8 provided to the consumer by the seller.

9 (e) The fee imposed under this chapter is in addition to the
10 taxes imposed under Chapter 151.

11 (f) The amount of the prepaid wireless 9-1-1 emergency
12 services fee that is collected by a seller from a consumer, whether
13 or not such amount is separately stated on an invoice, receipt, or
14 other similar document provided to the consumer by the seller,
15 shall not be included in the base for measuring any tax, fee,
16 surcharge, or other charge that is imposed by this state, any
17 political subdivision of this state, or any intergovernmental
18 agency.

19 (g) A seller may deduct and retain one percent of prepaid
20 wireless 9-1-1 emergency services fees that it collects to offset
21 its costs in administering this fee.

22 Sec. 163.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER AND
23 LIMITATIONS OF LIABILITY. (a) The comptroller shall establish
24 procedures for a seller to document that a sale is not a retail
25 transaction. The procedures shall substantially conform to
26 procedures for documenting sale for resale under Chapter 151.

27 (b) A provider or seller of prepaid wireless

1 telecommunications service is not liable for damages to any person
2 resulting from or incurred in connection with the provision of, or
3 the failure to provide, 9-1-1 emergency service, or for identifying
4 or failing to identify the telephone number, address, location, or
5 name associated with any person or device that is accessing or
6 attempting to access 9-1-1 emergency service, unless the act or
7 omission proximately causing the claim, damage, or loss constitutes
8 gross negligence, recklessness, or intentional misconduct.

9 (c) 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 any
12 lawful assistance to any investigative or law enforcement officer
13 of the United States, this or any other state, or any political
14 subdivision of this or any other state in connection with any lawful
15 investigation or other law enforcement activity by such
16 investigative or law enforcement officer unless the act or omission
17 proximately causing the claim, damage, or loss constitutes gross
18 negligence, recklessness, or intentional misconduct.

19 (d) Information that a provider or seller of prepaid
20 wireless telecommunications service is required to furnish to a
21 governmental entity in providing or selling 9-1-1 emergency service
22 is confidential and exempt from disclosure under Chapter 552,
23 Government Code. A provider or seller of prepaid wireless
24 telecommunications service is not liable to any person who uses a
25 9-1-1 emergency service created under Subchapter D, Chapter 771,
26 Health and Safety Code, for the release of information furnished by
27 the provider or seller of prepaid wireless telecommunications

1 service in providing or selling 9-1-1 emergency service.
2 Information that is confidential under this section may be released
3 only for budgetary calculation purposes and only in aggregate form
4 so that no provider-specific or seller-specific information may be
5 extrapolated.

6 (e) In addition to the protection from liability provided by
7 Subsections (b), (c), and (d), each provider and seller of prepaid
8 wireless telecommunications service is entitled to the further
9 protection from liability, if any, that is provided to wireless
10 service providers under Chapter 771, Health and Safety Code.

11 Sec. 163.004. APPLICATION OF OTHER PROVISIONS OF CODE.
12 Except as otherwise provided by this chapter:

13 (1) the fee imposed by this chapter is administered,
14 imposed, collected, and enforced in the same manner as a tax under
15 Chapter 151 is administered, imposed, collected, and enforced; and

16 (2) the provisions applicable to the sales tax imposed
17 under Subchapter C, Chapter 151, apply to the fee imposed by this
18 chapter.

19 Sec. 163.005. ALLOCATION OF FEE. (a) After deducting an
20 amount equal to two percent of collected charges, to be retained by
21 the comptroller as reimbursement for the costs of administering the
22 collection and remittance of prepaid wireless 9-1-1 emergency
23 services fees, and deducting an amount of up to 13 percent of the
24 collected fees, as determined under Subsection (c), the comptroller
25 shall deposit the money from the fees imposed by this chapter, other
26 than penalties and interest, to the credit of the 9-1-1 services fee
27 account in the general revenue fund. Until deposited to the credit

of the 9-1-1 services fee account as required by Subsection (b), money the comptroller collects under this chapter remains in a trust fund with the state treasury.

(b) Money collected under this chapter may be used only for services related to 9-1-1 and emergency services, including automatic number identification and automatic location information services. Not later than the 15th day after the last day of the month in which the money is collected, the Commission on State Emergency Communications shall distribute to each emergency communication 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 the state. The remaining money collected under this chapter shall be deposited to the 9-1-1 services fee account in the general revenue fund.

(c) The Commission on State Emergency Communications shall annually determine by rule the percentage of collected charges, not to exceed 13 percent, that under Subsection (a), shall be deducted by the comptroller and allocated as if collected under Section 771.072, Health and Safety Code.

Sec. 163.006. EXCLUSIVITY AND APPLICABILITY OF PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) The prepaid wireless emergency services fee shall be the only 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for 9-1-1 funding purposes,

1 on any provider, seller, or consumer with respect to the sale,
2 purchase, use, or provision of prepaid wireless telecommunications
3 service.

4 (b) The emergency service fee for wireless
5 telecommunications connections under Section 771.0711, Health and
6 Safety Code, applies to wireless telecommunications service that is
7 not subject to the prepaid wireless 9-1-1 emergency services fee
8 under this chapter.

9 SECTION 2. Subdivision (12), Section 771.001, Health and
10 Safety Code, is amended to read as follows:

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

20 (A) a service whose users do not have access to
21 9-1-1 service;

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

24 (C) a wireless roaming service or other nonlocal
25 radio access line service; ~~or~~

26 (D) a private telecommunications service; or

27 (E) a prepaid wireless telecommunications

1 service, as defined by Section 163.001, Tax Code.

2 SECTION 3. This Act takes effect September 1, 2009.