

1-1 By: Van de Putte S.B. No. 1587
1-2 (In the Senate - Filed March 10, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1587 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a uniform and statewide 9-1-1 emergency services fee on
1-11 the retail sale of prepaid wireless telecommunications services to
1-12 consumers.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subdivision (12), Section 771.001, Health and
1-15 Safety Code, is amended to read as follows:

1-16 (12) "Wireless service provider" means a provider of
1-17 commercial mobile service under Section 332(d), Federal
1-18 Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.),
1-19 Federal Communications Commission rules, and the Omnibus Budget
1-20 Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a
1-21 provider of wireless two-way communication service,
1-22 radio-telephone communications related to cellular telephone
1-23 service, network radio access lines or the equivalent, and personal
1-24 communication service. The term does not include a provider of:

1-25 (A) a service whose users do not have access to
1-26 9-1-1 service;

1-27 (B) a communication channel used only for data
1-28 transmission;

1-29 (C) a wireless roaming service or other nonlocal
1-30 radio access line service; [~~or~~]

1-31 (D) a private telecommunications service; or

1-32 (E) a prepaid wireless telecommunications
1-33 service, as defined by Section 771.081.

1-34 SECTION 2. Chapter 771, Health and Safety Code, is amended
1-35 by adding Subchapter D-1 to read as follows:

1-36 SUBCHAPTER D-1. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE

1-37 Sec. 771.081. DEFINITIONS. In this subchapter:

1-38 (1) "Consumer" means a person who purchases prepaid
1-39 wireless telecommunications service in a retail transaction.

1-40 (2) "Prepaid wireless 9-1-1 emergency services fee"
1-41 means the fee a seller collects from a consumer in the amount
1-42 required under Section 771.082.

1-43 (3) "Prepaid wireless telecommunications service"
1-44 means a wireless telecommunications service that allows a caller to
1-45 access 9-1-1 emergency communications services that is paid for in
1-46 advance at the time of purchase and that is sold in predetermined
1-47 units or dollars, the number of which declines with use in a known
1-48 amount.

1-49 (4) "Retail transaction" means an individual purchase
1-50 of a prepaid wireless telecommunications service from a seller for
1-51 any purpose other than resale.

1-52 (5) "Seller" means a person who sells prepaid wireless
1-53 telecommunications service to any person. The term includes
1-54 "seller" and "retailer" as defined by Section 151.008, Tax Code.

1-55 (6) "Wireless telecommunications service" means
1-56 commercial mobile radio service as defined by 47 C.F.R. Section
1-57 20.3.

1-58 Sec. 771.082. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES
1-59 FEE. (a) A prepaid wireless 9-1-1 emergency services fee shall be
1-60 collected by the seller from the consumer at the time of and with
1-61 respect to each retail transaction of prepaid wireless
1-62 telecommunications service occurring in this state. The amount of
1-63 the prepaid wireless 9-1-1 emergency services fee shall be either

2-1 separately stated on an invoice, receipt, or other similar document
 2-2 that is provided to the consumer by the seller or otherwise
 2-3 disclosed to the consumer by the seller.

2-4 (b) The prepaid wireless 9-1-1 emergency services fee is 50
 2-5 cents per retail transaction.

2-6 (c) For purposes of Subsection (a), a retail transaction
 2-7 that is effected in person by a consumer at a business location of
 2-8 the seller shall be treated as occurring in this state if that
 2-9 business location is in this state. Any other retail transaction,
 2-10 including a transaction over the Internet or via telecommunications
 2-11 service, shall be treated as occurring in this state for purposes of
 2-12 Subsection (a) if the retail transaction would be treated as
 2-13 occurring in this state under Chapter 151, Tax Code.

2-14 (d) The prepaid wireless 9-1-1 emergency services fee is the
 2-15 liability of the consumer and not of the seller or of any provider,
 2-16 except that the seller shall be liable to remit all prepaid wireless
 2-17 service fees that the seller collects from consumers as provided by
 2-18 Section 771.084, including all such charges that the seller is
 2-19 deemed to collect where the amount of the charge has not been
 2-20 separately stated on an invoice, receipt, or other similar document
 2-21 provided to the consumer by the seller.

2-22 (e) The fee imposed under this subchapter is in addition to
 2-23 the taxes imposed under Chapter 151, Tax Code.

2-24 (f) The amount of the prepaid wireless 9-1-1 emergency
 2-25 services fee that is collected by a seller from a consumer, whether
 2-26 or not such amount is separately stated on an invoice, receipt, or
 2-27 other similar document provided to the consumer by the seller,
 2-28 shall not be included in the base for measuring any tax, fee,
 2-29 surcharge, or other charge that is imposed by this state, any
 2-30 political subdivision of this state, or any intergovernmental
 2-31 agency.

2-32 (g) A seller may deduct and retain one percent of prepaid
 2-33 wireless 9-1-1 emergency services fees that it collects to offset
 2-34 its costs in administering this fee.

2-35 Sec. 771.083. EXCEPTIONS TO APPLICABILITY OF CHAPTER AND
 2-36 LIMITATIONS OF LIABILITY. (a) The comptroller shall establish
 2-37 procedures for a seller to document that a sale is not a retail
 2-38 transaction. The procedures shall substantially conform to
 2-39 procedures for documenting sale for resale under Chapter 151, Tax
 2-40 Code.

2-41 (b) A provider or seller of prepaid wireless
 2-42 telecommunications service is not liable for damages to any person
 2-43 resulting from or incurred in connection with the provision of, or
 2-44 the failure to provide, 9-1-1 emergency service, or for identifying
 2-45 or failing to identify the telephone number, address, location, or
 2-46 name associated with any person or device that is accessing or
 2-47 attempting to access 9-1-1 emergency service, unless the act or
 2-48 omission proximately causing the claim, damage, or loss constitutes
 2-49 gross negligence, recklessness, or intentional misconduct.

2-50 (c) A provider or seller of prepaid wireless
 2-51 telecommunications service is not liable for damages to any person
 2-52 resulting from or incurred in connection with the provision of any
 2-53 lawful assistance to any investigative or law enforcement officer
 2-54 of the United States, this or any other state, or any political
 2-55 subdivision of this or any other state in connection with any lawful
 2-56 investigation or other law enforcement activity by such
 2-57 investigative or law enforcement officer unless the act or omission
 2-58 proximately causing the claim, damage, or loss constitutes gross
 2-59 negligence, recklessness, or intentional misconduct.

2-60 (d) Information that a provider or seller of prepaid
 2-61 wireless telecommunications service is required to furnish to a
 2-62 governmental entity in providing or selling 9-1-1 emergency service
 2-63 is confidential and exempt from disclosure under Chapter 552,
 2-64 Government Code. A provider or seller of prepaid wireless
 2-65 telecommunications service is not liable to any person who uses a
 2-66 9-1-1 emergency service created under this chapter for the release
 2-67 of information furnished by the provider or seller of prepaid
 2-68 wireless telecommunications service in providing or selling 9-1-1
 2-69 emergency service. Information that is confidential under this

3-1 section may be released only for budgetary calculation purposes and
3-2 only in aggregate form so that no provider-specific or
3-3 seller-specific information may be extrapolated.

3-4 (e) In addition to the exemption from liability provided by
3-5 Subsections (b), (c), and (d), each provider and seller of prepaid
3-6 wireless telecommunications service is entitled to any other
3-7 exemption from liability under this chapter, if any, that is
3-8 provided to wireless service providers.

3-9 Sec. 771.084. APPLICATION OF PROVISIONS OF TAX CODE.
3-10 Except as otherwise provided by this subchapter:

3-11 (1) the fee imposed by this subchapter is
3-12 administered, imposed, collected, and enforced in the same manner
3-13 as a tax under Chapter 151, Tax Code, is administered, imposed,
3-14 collected, and enforced; and

3-15 (2) the provisions applicable to the sales tax imposed
3-16 under Subchapter C, Chapter 151, Tax Code, apply to the fee imposed
3-17 by this subchapter.

3-18 Sec. 771.085. ALLOCATION OF FEE. (a) After deducting an
3-19 amount equal to two percent of collected charges, to be retained by
3-20 the comptroller as reimbursement for the costs of administering the
3-21 collection and remittance of prepaid wireless 9-1-1 emergency
3-22 services fees, and deducting an amount of up to 13 percent of the
3-23 collected fees, as determined under Subsection (c), the comptroller
3-24 shall deposit the money from the fees imposed by this subchapter,
3-25 other than penalties and interest, to the credit of the 9-1-1
3-26 services fee account in the general revenue fund. Until deposited
3-27 to the credit of the 9-1-1 services fee account as required by
3-28 Subsection (b), money the comptroller collects under this
3-29 subchapter remains in a trust fund with the state treasury.

3-30 (b) Money collected under this subchapter may be used only
3-31 for services related to 9-1-1 and emergency services, including
3-32 automatic number identification and automatic location information
3-33 services. Not later than the 15th day after the last day of the
3-34 month in which the money is collected, the commission shall
3-35 distribute to each emergency communication district that does not
3-36 participate in the state system a portion of the money that bears
3-37 the same proportion to the total amount collected that the
3-38 population in the area served by the district bears to the
3-39 population of the state. The remaining money collected under this
3-40 subchapter shall be deposited to the 9-1-1 services fee account in
3-41 the general revenue fund.

3-42 (c) The commission shall annually determine by rule the
3-43 percentage of collected charges, not to exceed 13 percent, that
3-44 under Subsection (a) shall be deducted by the comptroller and
3-45 allocated as if collected under Section 771.072.

3-46 Sec. 771.086. EXCLUSIVITY AND APPLICABILITY OF PREPAID
3-47 WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) The prepaid wireless
3-48 emergency services fee shall be the only 9-1-1 funding obligation
3-49 imposed with respect to prepaid wireless telecommunications
3-50 service in this state, and no tax, fee, surcharge, or other charge
3-51 shall be imposed by this state, any political subdivision of this
3-52 state, or any intergovernmental agency, for 9-1-1 funding purposes,
3-53 on any provider, seller, or consumer with respect to the sale,
3-54 purchase, use, or provision of prepaid wireless telecommunications
3-55 service.

3-56 (b) The emergency service fee for wireless
3-57 telecommunications connections under Section 771.0711 applies to
3-58 wireless telecommunications service that is not subject to the
3-59 prepaid wireless 9-1-1 emergency services fee under this
3-60 subchapter.

3-61 SECTION 3. This Act takes effect January 1, 2010.

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