

## **BILL ANALYSIS**

C.S.H.B. 2398  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The 86th Texas Legislature enacted legislation to establish a framework for the administration and collection of sales and use taxes on sales of taxable items made through a physical, electronic, or online marketplace. While this legislation helped facilitate the collection of these taxes by clarifying the responsibilities of parties involved in the transactions, it has been suggested that further changes are necessary to fully delineate the responsibilities of parties involved with respect to certain exemptions, deductions, and the collection of certain additional fees and to clarify where sales are considered to be consummated for local tax purposes. C.S.H.B. 2398 seeks to provide additional clarity in this regard.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2398 amends the Tax Code to require a seller who places a ticket or other admission document for sale through a marketplace to certify to the person who owns or operates the physical or electronic marketplace, known as the marketplace provider, that the state sales and use tax imposed on the original purchase of the ticket or admission document was paid. The bill authorizes a marketplace provider who in good faith accepts the seller's certification to deduct on the seller's behalf the adjusted value of the ticket or admission document purchased for resale. The bill does the following:

- makes the state sales and use tax exemption for occasional sales inapplicable to the sale of a taxable item made by a marketplace seller through a marketplace; and
- revises the provisions regarding where the sale of a taxable item made by a marketplace seller through a marketplace is considered consummated for purposes of municipal and county sales and use taxes by providing that the sale of certain items through those means is considered consummated in the same way as sales not made through a marketplace.

C.S.H.B. 2398 amends the Health and Safety Code, effective July 1, 2022, as follows:

- to require a marketplace provider who processes sales of or payments for lead-acid batteries to collect a fee for each sale of a nonexempt battery, subject to the same rights and responsibilities as a wholesale or retail battery dealer collecting such a fee; and
- to require a marketplace provider to collect the prepaid wireless 9-1-1 emergency services fee on a sale of prepaid wireless telecommunications services made through the marketplace on the seller's behalf and to require the provider to remit the fee to the

comptroller of public accounts in a specified manner after deducting and retaining two percent of the fee as authorized under state law.

**EFFECTIVE DATE**

Except as otherwise provided, October 1, 2021.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2398 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute delays the effect of its Health and Safety Code provisions to July 1, 2022.