

By: Van de Putte S.B. No. 1587
Texas 81st Legislature

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. Subdivision (12), Section 771.001, 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 service, as defined by Section 771.081, only to the extent of the sale or provision of the service

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

Sec. 771.032. APPLICATION OF SUNSET ACT. (a) The Commission on State [Emergency Communications](#) is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that

chapter, the commission is abolished and this chapter expires September 1, 2011.

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

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

(2) whether the total of all revenues received from [9-1-1 services fees](#) adequately fund public safety in this state 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.

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

(d) If the commission approves the plan, it shall allocate to the region from the money collected under Sections 771.071, 771.0711, and 771.072, and 771.082 and appropriated to the commission the amount that the commission considers appropriate to 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 operations.

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

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

(d) The comptroller shall:

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

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

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

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

(e) The commission shall:

(1) deposit or distribute the money remitted under Subsection (d)(1) as Section 771.0711 provides for fees received under that section; and

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

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

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

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

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

(2) an amount of money equal to the total of the revenue from the emergency service fee for wireless telecommunications connections under Section 771.0711 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 this state ; and

(3) an amount of money equal to the total of the revenue from the [prepaid wireless 9-1-1 emergency](#) services [fee](#) under Section 771.082 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 this state .

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

(b) The account consists of:

(1) fees deposited in the fund as provided by Sections 771.071 ,

and 771.0711 , and 771.082 ; and

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

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

SUBCHAPTER D-1. [PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE](#)

Sec. 771.081. DEFINITIONS. In this subchapter:

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

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

(3) "[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:

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

(B) on a time period basis.

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

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

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

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

(b) The [prepaid wireless 9-1-1 emergency services 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. Each service purchased is a separate item for purposes of calculating a [fee](#) under this subsection.

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

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

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

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

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

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

(b) 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) 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 any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state in connection with any lawful investigation or other law enforcement activity by such investigative or law enforcement officer unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(d) 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 exempt from [disclosure](#) under Chapter 552, Government Code. A provider or seller of [prepaid wireless](#) telecommunications service is not liable to any person who uses a [9-1-1 emergency](#) service created under this chapter for the release of information furnished by the provider or seller of [prepaid wireless](#) telecommunications service in providing or selling [9-1-1 emergency](#) service. Information that is confidential under this section may be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific or seller-specific information may be extrapolated.

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

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

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

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

Sec. 771.085. ALLOCATION OF [FEE](#). (a) After deducting an amount not greater than 10 percent of collected [charges](#), as determined under Subsection (c), the comptroller shall deposit the money from the [fees](#) imposed by this subchapter, other than penalties and interest, to the credit of the [9-1-1 services fee](#) 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 subchapter remains in a trust fund with the state treasury.

(b) Money collected under this subchapter 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 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 subchapter shall be deposited to the [9-1-1 services fee](#) account in the general revenue fund.

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

Sec. 771.086. 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, on any provider, seller, or consumer with respect to the sale, purchase, use, or provision of [prepaid wireless](#) telecommunications service.

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

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