

SUBJECT: Statewide 9-1-1 fee on the sale of prepaid wireless phones and services

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Oliveira, Otto, Hartnett, C. Howard, P. King, Paxton, Peña,  
Taylor, Villarreal

0 nays

2 absent — Bohac, Hilderbran

SENATE VOTE: On final passage, May 13 — 28-3 (Eltime, Hegar, Nichols)

WITNESSES: *(On House companion bill, HB 3359: )*

For — Scott Mackey, Cellular Telecommunications and Internet Association; Leslie Ward, AT&T; *(Registered, but did not testify: Tristan Castaneda, Jr., Sprint; Kevin Cooper, Cricket Wireless; Sandra Haverlah, Texas Consumer Association; Ron Hinkle, Verizon Wireless; Ron Lewis, TracFone; Will Newton, National Federation of Independent Businesses / Texas; Thomas Ratliff, T-Mobile)*

Against — Ronnie Volkening, Texas Retailers Association; Jeff Walker, Radio Shack; *(Registered, but did not testify: Chris Newon, Texas Petroleum Marketers and Convenience Store Association)*

On — Bill Buchholtz, Texas 9-1-1 Alliance; Winfred Kang, Comptroller's Office; Paul Mallet, Commission on State Emergency Communications; *(Registered, but did not testify: Lavergne Schwender, Greater Harris County 9-1-1 Emergency Network; Michael Tomsu, Outside Regulatory Counsel for the Texas 9-1-1 Alliance)*

BACKGROUND: Under Health and Safety Code, ch. 771, wireless telecommunications services are assessed a fee of 50 cents that is used to pay for 9-1-1 emergency services across the state. Prepaid wireless phone services are not expressly included under the definition of "wireless service provider" as outlined in sec. 771.001, subdivision (12). The State Office of Administrative Hearings, through a contested hearings process, has

determined that prepaid wireless services are subject to the general fee on wireless communication services.

DIGEST:

SB 1587 would amend Health and Safety Code to establish a fee on prepaid wireless-telecommunication services to pay for 9-1-1 emergency services. The bill also would require the fee to be collected at the point of sale. SB 1587 would require the effect of the fee to be included in the Sunset review process of the Commission on State Emergency Communications in 2011. Finally, among other things, the bill would create certain limitations on the liability of prepaid wireless services providers.

**9-1-1 emergency service tax on prepaid wireless services.** SB 1587 would amend Health and Safety Code, ch. 771, adding subch. D-1 to establish a prepaid wireless 9-1-1 emergency services fee. The fee would be 2 percent of the cost of each prepaid wireless-telecommunications service purchased. Each service purchased would be considered a separate item for purposes of calculating the fee. The fee would be in addition to applicable sales and use taxes. The fee would be the liability of the consumer and not of the seller or of any provider, except that the seller would be liable to remit all prepaid wireless emergency-services fees that the seller collected from consumers. A seller would be allowed to deduct and retain one percent of prepaid wireless emergency services fees that it collected to offset the costs of administering the fee.

SB 1587 would define “prepaid wireless telecommunications service” to mean a wireless telecommunications service that allowed a caller to access 9-1-1 emergency communications services that was paid for in advance at the time of purchase and that was sold:

- in predetermined units or dollars, the number of which declined with use in a known amount; or
- on a time period basis.

**Allocation of fee.** SB 1587 would create sec. 771.085 to allocate the 9-1-1 emergency-services fee on prepaid-wireless services. Funds collected through the fee would only be used for services related to 9-1-1 emergency services, including automatic number identification and automatic location information services. The Commission on State Emergency Communications would distribute the funds to regions proportionate to their share of the state’s population.

SB 1587 would create sec. 771.0753 to allow regional centers and counties with a population of more than 700,000 to expend funds gathered by the fee on designing 9-1-1 systems and on obtaining and maintaining equipment and personnel that would be necessary to establish and operate a public safety answering point and related operations.

**Placing the 9-1-1 emergency-services fee under Sunset.** SB 1587 would amend Health and Safety Code, sec. 771.032 to require the Sunset Advisory Commission, as part of its regularly scheduled review of the Commission on State Emergency Communications, to include in its report to the 82nd Legislature:

- 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 tax revenues attributable to wireless telecommunications services; and
- whether the total of all revenues received from 9-1-1 service fees adequately funded public safety in Texas and whether the 9-1-1 services fees would continue to adequately fund public safety in future years.

**Exemption from liability.** SB 1587 would amend the Health and Safety Code to add sec. 771.083, which would exempt from liability a provider or seller of prepaid-wireless services 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 was accessing or attempting to access 9-1-1 emergency service, unless the act or omission that proximately caused the claim, damage, or loss constituted gross negligence, recklessness, or intentional misconduct.

A provider or seller of prepaid wireless services would not be 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 unless the act or omission that proximately caused the claim, damage, or loss constituted gross negligence, recklessness, or intentional misconduct.

Information that a provider or seller of prepaid wireless services would be required to furnish to a governmental entity in providing or selling

emergency service would be confidential and exempt from disclosure under the Texas Public Information Act (Government Code, ch. 552). A provider or seller of prepaid wireless services would not be liable to any person who used 9-1-1 emergency services for the release of information furnished by the provider or seller of prepaid wireless services in providing or selling 9-1-1 emergency service. This confidential information could be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific or seller-specific information could be extrapolated.

A provider or seller of prepaid wireless services would be entitled to any other exemption from liability provided to wireless service providers.

**Exclusivity and applicability of prepaid wireless emergency services fee.** SB 1587 would amend Health and Safety Code, ch. 771, by creating sec. 771.086 to establish that the prepaid wireless emergency services fee would be the only 9-1-1 funding obligation imposed on prepaid wireless telecommunications services in Texas, and no tax, fee, surcharge, or other charge would be imposed by the state, any political subdivision, 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.

The bill would take effect January 1, 2010.

**SUPPORTERS  
SAY:**

SB 1587 would expressly authorize a 9-1-1 emergency services fee on prepaid wireless services. According to the LBB, this fee would provide an additional \$6.7 million in funding to local 9-1-1 operators across the state. This funding would increase to \$13.1 million by fiscal 2014. 9-1-1 operators are in desperate need of additional funds as they are in the process of upgrading aging equipment to use more advanced technologies and meet increased standards and requirements. The fee that SB 1587 would establish would be used solely to support 9-1-1 emergency services.

SB 1587 would provide for the fee to be collected at the point of retail because that is the only certain point of contact with prepaid wireless consumers. A purchaser of prepaid wireless services may use those services only for a short time and pay for those services only once at the outset. Further, SB 1587 would allow the retailer to keep 1 percent of the fees collected to offset the cost of administering the fee.

SB 1587 specifically would include the effects of this fee in the Sunset review of the Commission on State Emergency Management. If Sunset staff made recommendations for altering the fee, the 82nd Legislature could consider them. However, if the fee were delayed until after the Sunset process, Sunset staff would not have any data on the collection and impact of the fee to study. The fee should be implemented starting January 1, 2010, allowing retailers plenty of time to prepare for collection and Sunset staff plenty of time to study it.

SB 1587 would use a 2-percent fee rather than a flat 50-cent fee because there is no guarantee of continuous contact with users of prepaid wireless services. An individual might buy 1,000 minutes that could meet the individual's needs for an entire year. A person with contract wireless services is billed on a much more regular cycle and pays the fee on a much more regular basis. A 2-percent fee would assess more accurately the value of prepaid wireless services and their billing patterns than would a 50-cent flat fee.

Currently, more than half of all calls to the 9-1-1 system are made on a wireless phone. As a matter of equity, it is critical that all wireless phone users, including those who use prepaid wireless services, pay appropriate fees to maintain the 9-1-1 emergency system.

**OPPONENTS  
SAY:**

SB 1587 would create an unprecedented shift in the point of collection of the 9-1-1 emergency services fee from those who provided services to the retailers who sold the phones and minutes. No other state has done this. Prepaid wireless providers are responsible for the collection of similar fees in other states. They collect the tax by simply reducing the number of minutes left on the phone's account. Switching the point of collection to the retailers would be extremely costly, as no retailer in the country has a cash register that is programmed to add this two percent fee into the invoice. Making the changes that SB 1587 would require would cost retailers hundreds of thousands of dollars and valuable employee time. The cost of implementing the bill would be especially burdensome on smaller retailers who may not sell many prepaid phones but still would have to collect the fees on them.

SB 1587 would set up a regressive 9-1-1 fee system. Many consumers of prepaid phones do not have the credit history required for a contract wireless phone and tend to be poorer than purchasers of contract phones. The 9-1-1 emergency services fee on contract wireless phones is 50 cents.

Since SB 1587 would implement a 2 percent fee, a person who paid \$50 for prepaid wireless phone services could pay twice as much in fees as a person who paid \$100 for contract wireless services.

SB 1587 might result in a reduction in overall fees collected for 9-1-1 emergency services. Because the bill would require that the fee be collected as though it were a sales tax, many online retailers that currently do not collect sales taxes also might not collect the 9-1-1 emergency-services fee on prepaid wireless services.

The change in the point of collection should be delayed. The Commission on State Emergency Communications is up for Sunset review in 2011. It would be better to make this change, if at all, after the Sunset Advisory Commission has had an opportunity to study the proposal and see how it would fit with other taxes and fees that fund emergency services. The state should not implement the change before it has thoroughly studied it. If the state would force retailers to make expensive changes in order to collect it, the state should be certain it would mesh with other revenues for 9-1-1 services and that it would generate adequate revenue to justify the cost of implementation.

**NOTES:**

The companion bill, HB 3359 by McClendon, was reported favorably as substituted by the House Ways and Means Committee on April 30 and placed on the May 13 General State Calendar.