

## BILL ANALYSIS

Senate Research Center

S.B. 1587  
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Business & Commerce  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Emergency services, such as those accessed via dialing 9-1-1, are funded through the assessments placed on monthly bills for most telecommunications services. Prepaid wireless telecommunications services (prepaid service) are a fairly recent entrant into the telecommunications market, and use of prepaid service is growing rapidly. An estimated two million Texans use prepaid service, typically purchased at a retail location or online in specific dollar increments. The traditional means of assessing an emergency services fee cannot be applied to prepaid service because there is no monthly bill provided to the customer. Further, state law does not permit the imposition of an emergency services fee to be placed on prepaid service.

As proposed, S.B. 1587 requires that a prepaid wireless 9-1-1 emergency services fee, beginning on January 1, 2010, be collected by the seller from the consumer at the time of and with respect to each retail transaction of prepaid service occurring in this state. S.B. 1587 provides that the fee is 50 cents per retail transaction and establishes the means by which the seller of prepaid service collects the fee from consumers. This bill entitles each provider and seller of prepaid service to the protection from liability in connection with the provision of or failure to provide 9-1-1 emergency service that is provided to wireless service providers.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Commission on State Emergency Communications in SECTION 1 (Section 163.005, Tax Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 2, Tax Code, by adding Chapter 163, as follows:

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

Sec. 163.001. DEFINITIONS. Defines "consumer," "person," "prepaid wireless 9-1-1 emergency services fee" (fee), "prepaid wireless telecommunications service" (prepaid service), "retail transaction," "seller," and "wireless telecommunications service."

Sec. 163.002. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) Requires that, beginning on January 1, 2010, a fee be collected by the seller from the consumer at the time of and with respect to each retail transaction of prepaid service occurring in this state. Requires that the amount of the prepaid services 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) Provides that the fee is 50 cents per retail transaction.

(c) Requires that a retail transaction that is effected in person by a consumer at a business location of the seller, for purposes of Subsection (a), be treated as occurring in this state if that business location is in this state. Requires that any other retail transaction, including a transaction over the Internet or via telecommunications service, be treated as occurring in this state for purposes of Subsection (a) if the retail transaction would be treated as occurring in this state under Chapter 151 (Limited Sales, Excise, and Use Tax).

(d) Provides that the 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 services fees that the seller collects from consumers provided by Section 163.004, 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) Provides that the fee imposed under this chapter is in addition to the taxes imposed under Chapter 151.

(f) Provides that the amount of the 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) Authorizes a seller to deduct and retain one percent of fees that it collects to offset its costs in administering this fee.

Sec. 163.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER AND LIMITATIONS OF LIABILITY. (a) Requires the comptroller of public accounts (comptroller) to establish procedures for a seller to document that a sale is not a retail transaction. Requires that the procedures substantially conform to procedures for documenting sale for resale under Chapter 151.

(b) Provides that a provider or seller of prepaid 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) Provides that a provider or seller of prepaid 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) Provides that information that a provider or seller of prepaid 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 (Public Information), Government Code. Provides that a provider or seller of prepaid service is not liable to any person who uses a 9-1-1 emergency service created under Subchapter D (Financing State Emergency Communications), Chapter 771 (State Administration Of Emergency Communications), Health and Safety Code, for the release of information furnished by the provider or seller of prepaid service in providing or selling 9-1-1 emergency service. Authorizes information that is confidential under this section to 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) Entitles each provider and seller of prepaid service, in addition to the protection from liability provided by Subsections (b), (c), and (d), to the further protection from liability, if any, that is provided to wireless service providers under Chapter 771, Health and Safety Code.

Sec. 163.004. APPLICATION OF OTHER PROVISIONS OF CODE. Provides that except as otherwise provided by this chapter, the fee imposed by this chapter is administered, imposed, collected, and enforced in the same manner as a tax under Chapter 151 is administered, imposed, collected, and enforced, and the provisions applicable to the sales tax imposed under Subchapter C (Imposition and Collection of Sales Taxes), Chapter 151, apply to the fee imposed by this chapter.

Sec. 163.005. ALLOCATION OF FEE. (a) Requires the comptroller, after deducting an amount equal to two percent of collected charges, to be retained by the comptroller as reimbursement for the costs of administering the collection and remittance of fees, and deducting an amount up to 13 percent of the collected fees, as determined under Subsection (c), to deposit the money from the fees imposed by this chapter, other than penalties and interest, to the credit of the 9-1-1 services fee account in the general revenue fund. Provides that 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) Authorizes money collected under this chapter to be used only for services related to 9-1-1 and emergency services, including automatic number identification and automatic location information services. Requires the Commission on State Emergency Communications (CSEC), not later than the 15th day after the last day of the month in which the money is collected, to 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. Requires that the remaining money collected under this chapter be deposited to the 9-1-1 services fee account in the general revenue fund.

(c) Requires CSEC to annually determine by rule the percentage of collected charges, not to exceed 13 percent, that under Subsection (a), is required to be deducted by the comptroller and allocated as if collected under Section 771.072 (Equalization Surcharge), Health and Safety Code.

Sec. 163.006. EXCLUSIVITY AND APPLICABILITY OF PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) Requires that the fee be the only 9-1-1 funding obligation imposed with respect to prepaid service in this state, and requires that no tax, fee, surcharge, or other charge 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 service.

(b) Provides that the emergency service fee for wireless telecommunications connections under Section 771.0711 (Emergency Service Fee for Wireless Telecommunications Connections), Health and Safety Code, applies to wireless telecommunications service that is not subject to the fee under this chapter.

SECTION 2. Amends Subdivision 12, Section 771.001, Health and Safety Code, to redefine "wireless service provider."

SECTION 3. Effective date: September 1, 2009.