

ACT 168

H.B. NO. 1000

A Bill for an Act Relating to Enhanced 911 Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 138, Hawaii Revised Statutes, is amended to read as follows:

~~“[CHAPTER 138]~~
ENHANCED 911 SERVICES ~~[FOR MOBILE PHONES]~~’

~~“[§138-1]~~ **Definitions.** As used in this chapter, unless the context requires otherwise:

“911” means the digits, address, internet protocol address, or other information used to access or initiate a call to a public safety answering point.

“911 coordinator” means the person designated to carry out the responsibilities of coordinating 911 services as required in Section 3(b) of the Wireless Communications and Public Safety Act of 1999.

“911 service” or “universal emergency number service” means public communications service that provides service users with the ability to reach a public safety answering point by accessing a 911 system.

“911 system” means an emergency communications system that:

- (1) Enables the user of a voice communications service connection such as telephone, computer, or commercial mobile radio service, Interconnected Voice over Internet Protocol service or a data communications service connection that transmits data exclusively, such as text messaging, to reach a public safety answering point by accessing 911, or via a service/relay bureau or accessing a 911 system through some other means; and
- (2) Provides enhanced 911 service.

“Automatic location identification” means [a-wireless] an enhanced 911 service capability that enables the automatic display of information indicating the address or approximate geographic location of the [wireless telephone] communication device used to place a 911 call [in accordance with the Federal Communications Commission Order].

“Automatic number identification” means [a-wireless] an enhanced 911 service capability that enables the automatic display of the ten-digit [wireless] telephone number [used to place a 911 call in accordance with the Federal Communications Commission order.] or some other unique identifier of the device from which a 911 call is placed.

“Board” means the [wireless] enhanced 911 board established under this chapter.

“Call” means any communication, message, signal, or transmission.

“Commercial mobile radio service” means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, Title² 47 [U.S.C.] United States Code Section 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, [P.L.] Public Law 103-66, August 10, 1993, 107 Stat. 312.

“Commercial mobile radio service connection” means each active wireless telephone number assigned to a commercial mobile radio service customer, including end-users of resellers whose place of primary use is within the State.

[“Federal Communications Commission order” means the original order issued in the Federal Communications Commission Docket No. 94-102 gov-

erning wireless enhanced 911 service and any other Federal [Communications] Commission orders related to the provision of wireless enhanced 911 service.]

“Communications service” means a service capable of accessing, connecting with, or interfacing with a 911 system, by dialing, initializing, or otherwise activating the 911 system by means of a local telephone device, commercial mobile radio service device, Interconnected Voice over Internet Protocol device, indirect communication through a service bureau or call relay service, such as alarm companies, or any other means.

“Communications service connection” means each telephone number or a device’s unique identifier assigned to a residential or commercial subscriber by a communications service provider, without regard to technology deployed.

“Communications service provider” means an entity that provides communications service to a subscriber.

“Database service provider” means a service supplier who maintains and supplies or contracts to maintain and supply an automatic information location database or master street address guide.

“Enhanced 911 fund” or “fund” means the special fund established by section 138-3.

“Enhanced 911 service costs” means all capital, nonrecurring, and recurring costs directly related to the implementation, operation, and administration of enhanced 911 services.

“Interconnected Voice over Internet Protocol” means a service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user’s location;
- (3) Requires internet protocol-compatible customer premises equipment; and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

“Interconnected Voice over Internet Protocol service provider” means an entity that provides Interconnected Voice over Internet Protocol service.

“Prepaid connection” means the sale of a communications service that is paid for in advance or sold in predetermined units of which the number of units declines with use of the services.

“Proprietary information” means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of [wireless] enhanced 911 service that are developed, produced, or received internally by a [wireless] communications service provider or by a provider’s employees, directors, officers, or agents.

“Public safety agency” means a functional division of [the State or county] a governmental entity that provides or has authority to provide, or a private entity contracted by a [state or county agency] governmental entity that provides, firefighting, law enforcement, ambulance, medical, or other emergency services.

“Public safety answering point” means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

“Reseller” means a person or entity that purchases [commercial mobile radio service] communications service from a [wireless] communications service provider for the purpose of reselling [commercial mobile radio service] communications service to end-users.

“Wireless enhanced 911 commercial mobile radio service costs” means all capital, nonrecurring, and recurring costs directly related to the implementa-

tion and operation of phase I or phase II wireless enhanced 911 services pursuant to the Federal Communications Commission order.

“Wireless enhanced 911 fund” or “fund” means the statewide special fund established to ensure adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service in Hawaii.

“Wireless provider” means a person or entity that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within the State.

§138-2^[3] ~~Wireless enhanced~~ **Enhanced 911 board.** (a) There is created within the department of accounting and general services, for administrative purposes, ~~a wireless~~ an enhanced 911 board consisting of ~~eleven~~ thirteen voting members; provided that the membership shall consist of:

- (1) The comptroller or the comptroller’s designee;
- (2) Three representatives from wireless communications service providers, who shall be appointed by the governor as provided in section 26-34~~;~~ except as otherwise provided by law;
- (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai~~;~~ who shall be appointed by the governor; and one representative, chosen by the mayor of the city and county of Honolulu, who shall be appointed by the governor as provided in section 26-34⁴ ~~;~~ except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point;
- (4) The consumer advocate or the consumer advocate’s designee; ~~and~~
- (5) One representative from a communications service company that offers Interconnected Voice over Internet Protocol services, who shall be appointed by the governor as provided in section 26-34; and

~~(6)~~ ^[(5)] (6) One representative of the ~~current wireline provider of enhanced 911~~ public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

~~(b)~~ ^(b) [Six members] A simple majority shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board.

~~(c)~~ ^(c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.

~~(d)~~ ^(d) The board shall meet upon the call of the chairperson, but not less than quarterly.

~~(e)~~ ^(e) The members representing wireless providers, the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95, and Interconnected Voice over Internet Protocol service providers shall be appointed by the governor for terms of two years~~;~~ except that terms of the two members initially appointed shall be for eighteen months.

~~(f)~~ ^(f) Each member shall hold office until the member’s successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

~~(g)~~ ^(g) The board may adopt rules under chapter 91 as necessary to carry out the purposes of this chapter.

~~(g)~~ ^[(h)] (h) The members shall serve without compensation. Members shall be entitled to reimbursements from the ~~wireless~~ enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

~~[(h)]~~ (i) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

- (1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and
- (2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support[-]; provided that no third-party accounting firm, consultant, or other third party hired to perform these administrative duties may be retained if the accounting firm, consultant, or other third party, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any entity subject to the provisions of this chapter.

~~[(h)]~~ (j) The board shall develop reasonable procedures to ensure that all ~~[wireless providers]~~ members receive adequate notice of board meetings and information concerning board decisions.

~~[[§138-3]]³~~Wireless enhanced]~~ Enhanced 911 fund. There is established outside the state treasury a special fund, to be known as the ~~[wireless]~~ enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate ~~[cost recovery for the deployment, of phase I and phase II wireless]~~ funding to deploy and sustain enhanced 911 service, developing and funding future enhanced 911 technologies, and [for] funding expenses of administering the fund. [Any funds that accumulate in the wireless enhanced 911 fund shall be retained in the fund unless determined by the legislature to be in excess.~~

~~[[§138-4]]~~ Surcharge. (a) A monthly ~~[wireless]~~ enhanced 911 surcharge, subject to this chapter, shall be imposed upon each ~~[commercial mobile radio]~~ communications service connection[-], except connections of the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

(b) ~~[The effective date of the surcharge shall be July 1, 2004.]~~ The rate of the surcharge shall be set at 66 cents per month for each ~~[commercial mobile radio]~~ communications service connection. The surcharge shall have uniform application and shall be imposed on each ~~[commercial mobile radio]~~ communications service connection operating within the State except:

- (1) Connections billed to federal, state, and county governmental⁵ entities; ~~[and]~~
- (2) Prepaid connections[-]; and
- (3) Connections provided by the public utility providing telecommunications services and land line enhanced 911 services through section 269-16.95.

(c) All ~~[wireless]~~ communications service providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each ~~[commercial mobile radio]~~ communications service connection. The ~~[wireless]~~ communications service provider or reseller may list the surcharge as a separate line item on each bill. If a ~~[wireless]~~ communications service provider or reseller receives a partial payment for a monthly bill from a ~~[commercial mobile radio]~~ communications service customer, the ~~[wireless]~~ communica-

tions service provider or reseller shall apply the payment against the amount the customer owes the [wireless] communications service provider or reseller, before applying the partial payment against the surcharge.

(d) A [wireless] communications service provider that:

- (1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and
- (2) Has been requested by a public safety answering point to provide [phase I or phase II wireless] enhanced 911 service in a particular county or counties,

may recover [wireless] enhanced 911 [commercial mobile radio] service costs as provided in this chapter.

(e) Each [wireless] communications service provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(f) A [wireless] communications service provider or reseller shall remit to the [wireless] enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges collected less amounts retained for administrative expenses incurred by the [wireless] communications service provider or reseller, as provided in subsection (e).

(g) A public utility providing telecommunications services and land line enhanced 911 services for its customer base and other service providers using the wire line provider's enhanced 911 service may collect and retain the surcharge at the established rate set forth in section 269-16.95.

~~(g)~~ (h) The surcharges collected by the [wireless] communications service provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are ~~they~~ the surcharges considered revenue of the provider or reseller.

~~(h)~~ (i) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the [wireless] communications service provider. [Wireless] Communications service providers shall have no liability to remit surcharges that have not been paid by customers. A [wireless] communications service provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded.

~~(i)~~ (j) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

~~(j)~~ (k) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing [wireless] enhanced 911 service [in accordance with the Federal Communications Commission order].

~~[[§138-5]]—Recovery~~ **Disbursements from the fund.** (a) ~~[After January 1, 2005, every]~~ Every public safety answering point shall be eligible to seek ~~[reimbursement]~~ disbursements from the fund ~~[solely]~~ to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning, required by the public safety answering point to provide technical functionality for the [wireless] enhanced 911 service [pursuant to the Federal Communications Commission order]. Reasonable costs may include expenses directly associated with the planning phases and

training of personnel in any new and emerging technologies involving enhanced 911. All other expenses necessary to operate the public safety answering point, including but not limited to those expenses related to overhead, staffing, and other day-to-day operational expenses, shall continue to be paid through the general funding of the respective counties.

(b) Every public safety answering point shall be eligible to seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than board members, on board committees, including established and investigative committees.

~~[(b) After January 1, 2005, each wireless]~~ (c) Each communications service provider may request reimbursement from the fund of ~~[wireless] enhanced 911 [commercial mobile radio]~~ service costs incurred; provided that the costs:

- (1) Are recoverable under section 138-4(d); and
- (2) Have not already been reimbursed to the ~~[wireless]~~ communications service provider from the fund.

In no event shall a ~~[wireless]~~ communications service provider be reimbursed for any amount above its actual ~~[wireless] enhanced 911 [commercial mobile radio]~~ communications service costs allowed to be recovered under section 138-4(d).

(d) Every communications service provider may seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than board members, on board committees, including established and investigative committees.

~~[(e)]~~ (e) After the expenses of the board are paid, the public safety answering points shall be allocated two-thirds of the remaining balance of the fund. The remaining one-third shall be available for ~~[wireless]~~ communications service provider cost recovery. The board shall determine the reimbursement amounts for the public safety answering points, based on the limitations set forth in section 138-5(a). The reimbursement level for each ~~[wireless]~~ communications service provider shall be limited:

- (1) To one-third of the total contribution made by the [wireless] individual communications service provider [to the wireless provider cost recovery portion of] into the fund; provided that this method of direct reimbursement shall not be available to the provider of wire line enhanced 911; and
- (2) As provided in [section 138-5(b)] subsection (c).

[[§138-6]] Report to the legislature. The board shall submit an annual report to the legislature, including:

- (1) The total aggregate surcharge collected by the State in the last fiscal year;
- (2) The amount of disbursement from the fund;
- (3) The recipient of each disbursement and a description of the project for which the money was disbursed;
- (4) The conditions, if any, placed by the board on disbursements from the fund;
- (5) The planned expenditures from the fund in the next fiscal year;
- (6) The amount of any unexpended funds carried forward for the next fiscal year;
- (7) A cost study to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and
- (8) A ~~[progress]~~ status report of jurisdictional ~~[readiness]~~ capabilities for ~~[wireless E911] enhanced 911 services, including public safety answering points[, wireless providers,] and [wireline] communica-~~ tions service providers. ~~[The report shall include the status of re-~~

quirements outlined in the Federal Communications Commission Order 94-102 and subsequent supporting orders related to phase I and phase II wireless 911 services.

[[§138-7 Audits.]] (a) During any period in which [a wireless] an enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and [wireless] communications service providers recovers only costs and expenses directly related to the provision of [~~phase I or phase II wireless~~] enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each [~~commercial mobile radio~~] communications service connection is required to be adjusted. The costs of the audit shall be an administrative cost of the board recoverable from the fund.

[[§138-8]] Proprietary information. (a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying [wireless] enhanced 911 service shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting [wireless] communications service provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting [wireless] communications service provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual [wireless] communications service provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a [wireless] communications service provider. The board shall hold all propriety information in confidence and shall adopt reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other [wireless] communications service providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the [wireless] communications service provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the [~~three wireless~~] communications service provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the [wireless] communications service provider representatives.

[[§138-9]] Limitation of liability. (a) Notwithstanding any law to the contrary, in no event shall any [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third

party retained by the State under section 138-2, or their respective employees, directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to ~~[phase I or phase II wireless]~~ enhanced 911 or any other [wireless] communications service intended to help persons obtain emergency assistance. In addition, no [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of ~~[phase I or phase II wireless]~~ enhanced 911 service.

[[§138-10]] Database or location information. (a) Any ~~[commercial mobile radio]~~ communications service location information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.

(b) A person shall not disclose or use, for any purpose other than the [wireless] enhanced 911 calling system, information contained in the database of the [wireless] communications service provider's network portion of the [wireless] enhanced 911 calling system established pursuant to this chapter, without the prior written consent of the [wireless] communications service provider.

[[§138-11]] Dispute resolution. (a) Any [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the [Wireless] Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the nonprevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any [wireless] communications service provider, reseller, independent, third-party accounting firms, consultants, or other third party retained by the State under section 138-2, or public safety

answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof.

~~[[§138-12]]~~ **Service contracts.** A [wireless] communications service provider shall not be required to provide [wireless] enhanced 911 service until the [wireless] communications service provider and the public safety answering point providing [wireless] enhanced 911 service in the county or counties in which the [wireless] communications service provider is licensed to provide [commercial mobile radio] communications service have entered into a written agreement setting forth the basic terms of service to be provided.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2011.

(Approved June 27, 2011.)

Notes

1. No close bracket.
2. Should be underscored.
3. So in original.
4. Prior to amendment “,” appeared here.
5. Prior to amendment “government” appeared here.