

SUBJECT: Extending liability coverage to next-generation 9-1-1 services

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Simmons
0 nays
2 absent — Cortez, Sheets

WITNESSES: For — Mike Tomsu, Texas 9-1-1 Alliance; (*Registered, but did not testify:* Velma Cruz, Sprint; Lisa Hughes, AT&T; Dale Laine, Texas Cable Association; Richard Lawson, Verizon; Richard Muscat, Bexar Metro 911 Network District; Thomas Ratliff, T-Mobile USA; Shayne Woodard, Texas 9-1-1 Alliance)

Against — None

On — (*Registered, but did not testify:* Kelli Merriweather, Commission on State Emergency Communications)

BACKGROUND: Health and Safety Code, sec. 771.053, provides immunity from liability to a telecommunications service provider engaged in 9-1-1 services for any claim, damage, or loss committed while providing 9-1-1 services, except those arising from acts of gross negligence, recklessness, or intentional misconduct.

Under sec. 771.061, information that a telecommunications provider and certain third parties furnish to a governmental entity as part of a 9-1-1 service is confidential.

Sec. 772.001(6), defines “9-1-1 service” as a telecommunications service through which the user of a public telephone system has the ability to reach a public safety answering point by dialing the digits 9-1-1.

Penal Code, sec. 42.061 makes it an offense for a person who makes a telephone call to 9-1-1 when there is not an emergency and who

knowingly or intentionally remains silent or makes abusive or harassing statements to a 9-1-1 employee. A person may also commit this offense by knowingly allowing his or her telephone to be used by another for such a call. Such an offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Penal Code, sec. 42.062 makes it an offense to interfere with another's ability to place an emergency telephone call. A person also may commit this offense by recklessly rendering unusable a phone that otherwise would be used by another to make an emergency call. This offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), except it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the actor has been previously convicted of this crime.

DIGEST:

CSHB 1972 would expand the limited liability provided to 9-1-1 service providers to include communications service providers, developers of software used in providing 9-1-1 service, and third parties or other entities involved in providing 9-1-1 service. The bill also would extend this protection to the officers, directors, and employees of these providers and associated entities.

The bill would change the definition of a "9-1-1 service" to mean a communications service that connects users to a public safety answering point through a 9-1-1 system. It also would remove several references to "telephone" throughout Health and Safety Code, ch. 771 and ch. 772, and where appropriate would replace them with references to communication devices.

The bill would make confidential the information that a communications service provider was required to furnish to a governmental entity in providing 9-1-1 service. A "governmental entity" would include a regional planning commission, emergency communications district, or public safety answering point. The bill also would protect from disclosure any information that a service provider, third party, or other entity voluntarily furnished at the request of a governmental entity.

The immunity and confidentiality protection would be interpreted to have the same scope as provided by applicable federal law that grants providers or users of 9-1-1 services immunity and protection from liability.

The bill would specify that defining “9-1-1 service” as a communications service did not expand or change the authority or jurisdiction of a public agency or the Public Utility Commission (PUC) over commercial mobile service or wireline service, including voice over internet protocol (VOIP) and related technologies, nor the authority of a public agency or the PUC to assess 9-1-1 fees.

In statutes criminalizing misuse of or interference with 9-1-1 services, CSHB 1972 would include requests for assistance using “an electronic communications device.”

The bill would take effect on September 1, 2013. Penal Code changes would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1972 would modernize the statutory language of the 9-1-1 emergency system to include new technologies that enhance the information available to first responders. Communications technology is developing at an astounding pace, which requires that the statutes referring to them be updated.

By removing technological references that are outdated and limiting, the bill would extend appropriate liability and confidentiality coverage to new types of 9-1-1 service providers, including broadband, internet protocol (IP), VOIP, Session Initiation Protocol (SIP), Short-Message Service (SMS), and other next-generation technologies. Nothing in the bill would change how the state regulates the rates charged or services delivered by communications service providers.

HB 1972 also would update existing statutes that criminalize abusive 9-1-1 calls and interference with these calls. Specific references to these newer technologies in criminal statutes would give them the breadth prosecutors need to properly prosecute these cases.

It would be appropriate to extend liability coverage to software developers, manufacturers, third-party entities, and other entities involved in providing 9-1-1 services because this liability protection historically has been offered to public agencies and private telecommunications providers, such as landline telecoms. Expanding this model to cover the new technologies that now or shortly will be part of the 9-1-1 system simply would continue this approach. Further, it would encourage more communications providers to offer these services to their customers,

increasing the number of people who could rely on 9-1-1 assistance. Expanding this coverage would result in more crimes reported and prevented, as well as greater protection for human lives and property.

OPPONENTS
SAY:

HB 1972 inappropriately would extend liability protections to business and corporate entities that are better regulated under a negligence standard. The bill would extend immunity to software developers, manufacturers, third-party entities, and others involved in providing 9-1-1 services, holding them liable only for claims stemming from grossly negligent, reckless, or intentional acts. They should continue to be held to the negligence standard appropriate for private entities.

NOTES:

CASHB 1972 differs from the bill as filed in that it specifies that defining “9-1-1 service” as a communications service would not expand or change the authority or jurisdiction of a public agency or the PUC over commercial mobile service or wireline service, including voice over internet protocol (VOIP) and related technologies, nor the authority of a public agency or the PUC to assess 9-1-1 fees.

The companion bill, SB 1264 by Hancock, was referred to the Senate Business and Commerce Committee on March 13.