

# S.B. NO. 2304

JAN 25 2006

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## A BILL FOR AN ACT

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RELATING TO CIVIL DEFENSE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 PART 1

2 SECTION 1. It is the policy of this State that civil  
3 defense functions of the State should be coordinated to the  
4 maximum extent with private agencies, federal and county  
5 governments, and nonprofit organizations to address natural and  
6 man-made disasters or related emergencies. The legislature  
7 recognizes that the laws, agencies, and practices at the federal  
8 level have evolved and changed. The Civil Defense Act of 1950  
9 was repealed and subsequently replaced with the Robert T.  
10 Stafford Disaster Relief and Emergency Assistance Act. Federal  
11 agencies have been realigned with a corresponding change in  
12 responsibilities and practices. The legislature finds that  
13 there is a need to bring Hawaii's civil defense laws into  
14 conformity with current federal laws, as well as implement best  
15 practices to ensure our state is fully prepared.

16 SECTION 2. Section 128-1, Hawaii Revised Statutes, is  
17 amended to read as follows:

1           "**§128-1 Policy and purposes.** (a) Because of the  
2 importance of the State as a strategic defense area, the  
3 dependence of the State upon seaborne commerce for food supplies  
4 and other commodities essential to the public health, safety,  
5 and welfare and to the economic life of its people, the danger  
6 of shortages of such supplies and commodities, and other  
7 emergency conditions affecting the readiness of this community  
8 ~~[to do its part in the existing national emergency which was~~  
9 ~~declared by the President on December 16, 1950,]~~ to respond to  
10 any attack, disaster, or emergency, and the possibility of  
11 disasters or emergencies of great destructiveness resulting from  
12 fire, flood, tidal wave tsunami, volcanic eruption, earthquake,  
13 hurricane, or other natural causes and disasters or emergencies  
14 caused by acts of man, including but not limited to, massive oil  
15 spills, nuclear accidents, airplane crashes, civil disturbances,  
16 terrorism, enemy attack, sabotage, or other hostile action,  
17 therefore in order to ~~[insure]~~ ensure that preparations of this  
18 State and the government provided for this State will be  
19 adequate to deal with disasters or emergencies, to make adequate  
20 provision against such shortages, to maintain the strength,  
21 resources, and economic life of the community and provide for  
22 prompt and effective action, as the circumstances develop and in

1 cooperation with the federal government, to further and promote  
2 the national defense and civil defense and to protect the public  
3 health, safety, and welfare, the provisions of this chapter are  
4 hereby found and declared to be necessary.

5 (b) It is further declared to be a purpose of this chapter  
6 and a policy of the State that all civil defense functions of  
7 this State be coordinated to the maximum extent with the  
8 comparable functions of the federal government including its  
9 various departments and agencies, with those of other states and  
10 localities, and with those of private agencies of every type, to  
11 the end that the most effective preparation and use may be made  
12 of all personnel, resources, and facilities for dealing with any  
13 disaster or emergency that may occur. It further is the intent  
14 of the legislature that all other emergency functions be  
15 coordinated to the maximum extent with the comparable functions  
16 of the federal government, its departments and agencies.

17 (c) It is declared to be the intent of the legislature to  
18 provide for and confer comprehensive powers for the purposes  
19 stated. This chapter shall be liberally construed to effectuate  
20 its purposes, provided that this chapter shall not be construed  
21 as conferring any power or permitting any action which is  
22 inconsistent with the Constitution and laws of the United

1 States, but, in so construing this chapter, due consideration  
2 shall be given to the circumstances as they exist from time to  
3 time. This chapter shall not be deemed to have been amended by  
4 an act hereafter enacted at the same or any other session of the  
5 legislature, unless this chapter is amended by express reference  
6 hereto."

7 SECTION 3. Section 128-2, Hawaii Revised Statutes, is  
8 amended by adding new definitions to be appropriately inserted  
9 and to read as follows:

10 "Disaster" means any natural catastrophe, including any  
11 hurricane, tornado, storm, high water, wind driven water, tidal  
12 wave, tsunami, earthquake, volcanic eruption, landslide,  
13 mudslide, snowstorm, or drought, or, regardless of cause, any  
14 fire, flood, or explosion, in any part of the State, which in  
15 the determination of the governor causes damage of sufficient  
16 severity and magnitude to warrant assistance under this chapter  
17 to supplement the efforts and available resources of local  
18 governments and state agencies, and disaster relief  
19 organizations in alleviating the damage, loss, hardship, or  
20 suffering caused thereby;

21 "Emergency" means any occasion or instance for which, in  
22 the determination of the Governor, state assistance is needed to

1 supplement the efforts and capabilities of local governments and  
2 state agencies to save lives and to protect property and public  
3 health and safety, or to lessen or avert the threat of a  
4 catastrophe in any part of the State;"

5 SECTION 4. Section 128-2, Hawaii Revised Statutes, is  
6 amended by amending the definitions of "attack", "civil  
7 defense", "civil defense emergency period", and "federal  
8 program" to read as follows:

9 "Attack" means any attack or series of attacks by an enemy  
10 of the United States or any domestic or international terrorist  
11 or terrorist group or entity causing, or which may cause, damage  
12 or injury to civilian property or persons in the United States  
13 in any manner by the use of bombs, shellfire, or atomic,  
14 radiological, chemical, bacteriological, or biological means or  
15 other weapons or processes; sabotage; and any form of hostile  
16 action;

17 "Civil defense" means the preparation for and the carrying  
18 out of all functions, other than functions for which military  
19 forces are primarily responsible, to prevent, minimize, and  
20 repair injury and damage resulting, or which would result, from  
21 disasters caused by an attack[-], emergency, or disaster. The  
22 disasters include without limitation those that result from or

1 arise out of action in resisting or combating an attack or  
2 apparent attack. Civil defense functions include all those  
3 provided for by this chapter which are for the purposes stated  
4 in this paragraph and, without limitation, fire fighting  
5 services, police services, medical and health services, rescue  
6 engineering, air raid warning services, communications,  
7 radiological, chemical, and other special weapons defense,  
8 evacuation of persons from stricken or danger areas, or from  
9 security areas established by or under authority of the United  
10 States, emergency housing and other emergency welfare services,  
11 emergency transportation, protection of important installations,  
12 and other functions related to civilian protection, together  
13 with all other activities necessary or incidental to the  
14 preparation for and carrying out of the foregoing functions.  
15 "Civil defense" is deemed to encompass, but is not limited to,  
16 all those activities and measures which, by the Federal Civil  
17 Defense Act of 1950, are defined to be within the term "civil  
18 defense", insofar as the activities and measures relate to  
19 preparation for, or relate to functioning in respect of, an  
20 attack upon the State, emergency, or disaster but for the  
21 purposes of section 128-10(1) and (3) shall not be deemed to be  
22 restricted geographically;

1 "Civil defense emergency period" means the period of  
2 existence of [~~a state of civil defense~~] an emergency or disaster  
3 lawfully proclaimed [~~in accordance with applicable federal the~~  
4 ~~Federal Civil Defense Act of 1950~~] by the President or the  
5 Congress, if so proclaimed on a national basis or for any  
6 geographic area that includes the State, and also means any  
7 period so proclaimed by the governor, as provided by section  
8 128-7;

9 "Federal program" means a program of the federal  
10 government, its departments, and agencies, for emergency  
11 management, homeland security, homeland defense, rationing or  
12 conservation of materials, supplies, commodities, equipment, or  
13 facilities, for assigning priorities with respect thereto, for  
14 price control thereof, for wage controls, for the mobilization  
15 of personnel, for alien property control or control of trading  
16 with the enemy, for the welfare of veterans, for defense  
17 production, construction, or transportation, or any program or  
18 function of the department of defense [~~or the federal civil~~  
19 ~~defense administration;~~], the federal department of homeland  
20 security and any of its agencies;"

21 SECTION 5. Section 128-7, Hawaii Revised Statutes, is  
22 amended to read as follows:

1           **"§128-7 Civil defense emergency period.** The term "civil  
2 defense emergency period" includes (1) [~~a period of civil~~  
3 ~~defense emergency proclaimed pursuant to the Federal Civil~~  
4 ~~Defense Act of 1950,~~] an emergency or disaster lawfully  
5 proclaimed by the President or the Congress, if so proclaimed on  
6 a national basis or for any geographic area that includes the  
7 State, or (2) the period of the existence of a state of civil  
8 defense emergency or disaster in the State hereby authorized to  
9 be proclaimed by the governor if the governor finds that an  
10 attack upon the State, or an emergency or disaster within the  
11 State, has occurred or that there is danger or threat thereof,  
12 or that there has arisen any state of affairs or circumstances  
13 of such a grave nature as to affect the common defense or the  
14 readiness of the community to meet an attack, emergency, or  
15 disaster and which requires the invocation of provisions of this  
16 chapter that are effective only during a period of [~~civil~~  
17 ~~defense~~] emergency. The governor shall be the sole judge of the  
18 existence of the danger, threat, state of affairs, or  
19 circumstances. A period of civil defense emergency proclaimed  
20 pursuant to [~~the Federal Civil Defense Act of 1950~~] federal law  
21 shall terminate as therein provided, and a period of civil



1 defense emergency proclaimed by the governor shall terminate  
2 upon proclamation by the governor."

3 PART 2

4 SECTION 6. The legislature finds that there is a need to  
5 clarify the law regarding the liability of a healthcare facility  
6 operator when the operator permits the use of the facility for  
7 sheltering persons, including patients and persons in the  
8 facility's care or custody during disasters and emergencies.

9 The legislature recognizes that there is a shortage of shelter  
10 space in Hawaii and that the healthcare facility industry should  
11 be encouraged to assist in the sheltering of patients,  
12 residents, employees and family members, and others during  
13 disasters and emergencies. Under the current law, it is unclear  
14 whether a healthcare facility operator is able to comply with  
15 the requirements of section 128-19, Hawaii Revised Statutes when  
16 providing shelter to patients or residents. The purpose of this  
17 Act is to clarify that compensation received by a healthcare  
18 facility operator for the care of patients or residents is not  
19 considered compensation for purposes of section 128-19, Hawaii  
20 Revised Statutes, provided that the healthcare facility is  
21 operating in accordance with applicable local, state, and  
22 federal laws, rules, and regulations, and any requirements for

1 emergency care and disaster planning, and the operator has not  
2 abandoned its patients or residents.

3 SECTION 7. Section 128-19, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§128-19 Immunity from liability of private shelter.** Any  
6 individual, partnership, firm, society, unincorporated  
7 association, joint venture group, hui, joint stock company,  
8 corporation, trustee, personal representative, trust estate,  
9 decedent's estate, trust, or other legal entity whether doing  
10 business for itself or in a fiduciary capacity, owning or  
11 controlling real property, who voluntarily and without  
12 compensation grants a license or privilege for, or otherwise  
13 permits, the designation by the director of civil defense for  
14 the use of the whole or any part of the property for the purpose  
15 of sheltering persons during an actual, impending, mock or  
16 practice attack shall, together with its successors in interest,  
17 if any, not be civilly liable for negligently causing the death  
18 of or injury to any person or damage to any personal property on  
19 the property of the licensor in connection with the use of the  
20 licensed premises for the purposes designated. For purposes of  
21 this section, the consideration [~~paid by any guest or person for~~


1 ~~transient accommodation lodging shall not be considered~~  
2 ~~compensation.]:~~

3 (1) Paid by any guest or person for transient  
4 accommodation lodging; and

5 (2) Received by a healthcare facility operator for the  
6 care of patients or residents, provided the healthcare  
7 facility is operating in accordance with applicable  
8 local, state, and federal laws, rules, and regulations  
9 including any requirements for emergency care and  
10 disaster planning, and the operator has not abandoned  
11 its patients or residents shall not be considered  
12 compensation."

13 SECTION 8. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect upon its approval.

16  
17 INTRODUCED BY: 

18 BY REQUEST

JUSTIFICATION SHEET

**SB. NO. 2304**

DEPARTMENT: Defense

TITLE: A BILL FOR AN ACT RELATING TO CIVIL DEFENSE.

PURPOSE: The purpose of this bill is to update Hawaii's civil defense laws into conformity with current federal laws, organizational structure, and practices.

MEANS: Amend sections 128-1, 128-2, 128-7, and 128-19, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The State of Hawaii recognizes that the laws, agencies, and practices at the federal level in mitigating natural and man-made disasters have evolved and changed. The Civil Defense Act of 1950 has been repealed and replaced by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. To ensure the most effective preparation and use of personnel, resources, and facilities, Hawaii needs to bring its civil defense laws into conformity with current federal laws.

Liability laws regarding private shelters need to be clarified so that health care facilities that provide shelter are not liable for damages when offering protection from a disaster.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: DEF 110

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OTHER AGENCIES

AFFECTED: None.

EFFECTIVE DATE: Upon approval.