

JAN 26 2009

A BILL FOR AN ACT

RELATING TO CIVIL DEFENSE.

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

1 SECTION 1. One of the policies and purposes of chapter
2 128, Hawaii Revised Statutes, is for all civil defense functions
3 of the State to be coordinated to the maximum extent possible
4 with the comparable functions of the federal government
5 (including its various departments and agencies), other states
6 and localities, and private agencies of every type; such that
7 the most effective preparation and use may be made of all
8 personnel, resources, and facilities for dealing with any
9 disaster or emergency that may occur.

10 The legislature finds that there is a need to amend the law
11 regarding the liability of an owner or operator of a hospital,
12 community based care home, home-based care home, or healthcare
13 agency or facility of any type, as well as day care, and
14 educational institutions, when an owner or operator of these
15 facilities permit the use of the property for sheltering persons
16 during disasters and emergencies. The legislature recognizes
17 that there is a shortage of shelter space in Hawaii and that the
18 private industry should be encouraged to assist the public by

1 providing shelter for those persons who by reason of existing
2 relationships may already be in these facilities during
3 disasters and emergencies. Under the current law, it is unclear
4 whether owners or operators of certain facilities are able to
5 fully comply with the requirements of section 128-19, Hawaii
6 Revised Statutes, when providing shelter to persons in their
7 care, custody, or charge because section 128-19 requires that
8 shelter be made available without compensation. The purpose of
9 this Act is to clarify that compensation received by certain
10 private entities for use of facilities as a private shelter is
11 not considered compensation for the purposes of section 128-19,
12 Hawaii Revised Statutes.

13 SECTION 2. Section 128-19, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§128-19 Immunity from liability of private shelter. (a)**
16 Any individual, partnership, firm, society, unincorporated
17 association, joint venture group, hui, joint stock company,
18 corporation, trustee, personal representative, trust estate,
19 decedent's estate, trust, or other legal entity whether doing
20 business for itself or in a fiduciary capacity, owning or
21 controlling real property, who voluntarily and without
22 compensation grants a license or privilege for, or otherwise

1 permits, the designation by the director of civil defense for
2 the use of the whole or any part of the property for the purpose
3 of sheltering persons during an actual, impending, mock, or
4 practice attack shall, together with its successors in interest,
5 if any, not be civilly liable for negligently causing the death
6 of or injury to any person or damage to any personal property on
7 the property of the licensor in connection with the use of the
8 licensed premises for the purposes designated. [~~For purposes of~~
9 ~~this section, the consideration paid by any guest or person for~~
10 ~~transient accommodation lodging shall not be considered~~
11 ~~compensation.~~]

12 (b) For the purposes of this section, the following shall
13 not be considered compensation:

14 (1) Any compensation or consideration paid by or on behalf
15 of any guest or person for transient accommodation
16 lodging;

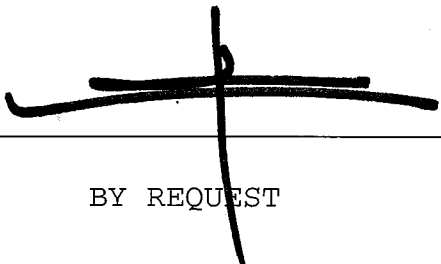
17 (2) Any compensation or consideration paid for any
18 patient, resident, or ward present or residing in any
19 hospital, community-based care home, home-based care
20 home, or healthcare agency of any type licensed by the
21 department of health or the department of human
22 services and used as a private shelter under this

1 section; provided that the protections afforded by
2 this section shall not extend beyond the use of the
3 private shelter under this section for any other duty
4 or standard of care owed to any patient, resident, or
5 ward; and

6 (3) Any compensation or consideration paid by or on behalf
7 of any minor or student of any age in any day care,
8 preschool, elementary school, middle school, or any
9 other educational facility used as a private shelter
10 under this section."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14
15 INTRODUCED BY: 

16 BY REQUEST

Report Title:

Liability Exemptions; Disasters; Care Homes; Schools

Description:

Supports State Civil Defense's Shelter-in-Place initiative by exempting civil liability for care homes and schools, in addition to hotels, during an officially designated emergency.

SB 898

JUSTIFICATION SHEET

DEPARTMENT: Defense

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

PURPOSE: To strengthen the provisions in chapter 128, Hawaii Revised Statutes (HRS), by clarifying the law regarding liability of an owner or operator of a hospital, community-based care home, home-based care home, or healthcare agency or facility of any type, as well as day care, and educational institutions, when the owner or operator permits the use of the property for sheltering persons during disasters and emergencies.

MEANS: Amend section 128-19, HRS.

JUSTIFICATION: There presently exists a shortage of emergency shelter spaces for residents and visitors including special health needs population groups. Under the current law it is unclear whether an owner or operator of a hospital, community-based care home, home-based care home, or healthcare agency or facility of any type, as well as day care, and educational institutions, is able to fully comply with the requirement of section 128-19, HRS, which stipulates that shelter be made available without compensation. The proposed bill seeks to clarify that any compensation received by owners or operators of a hospital, daycare, community-based care home, home-based care home, or healthcare agency or facility, as well as educational institutions, from patients, residents, and wards under their care, is not considered compensation for purposes of section 128-19, HRS.

Impact on the public: The bill would provide health care facilities and educational institutions the opportunity to be designated a private shelter by the Director of Civil Defense for the purpose of sheltering patients, residents, and wards under their care during emergencies.

Impact on the department and other agencies:
The bill would lessen the demand on county and state emergency evacuation resources and on public emergency shelter facilities that need to be equipped and staffed to handle additional residents and special health needs population groups.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: All state and county departments and agencies.

EFFECTIVE DATE: Upon approval.