

**" [CHAPTER 127A]
EMERGENCY MANAGEMENT**

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Note

Pacific-Asia institute for resilience and sustainability. L 2014, c 229.

" **[\$127A-1] Policy and purpose.** (a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from natural or man-made hazards, and in order to ensure that the preparations of this State will be adequate to deal with such disasters or emergencies; to ensure the administration of state and federal programs providing disaster relief to individuals; and generally to protect the public health, safety, and welfare and to preserve the lives and property of the people of the State, it is hereby found and declared to be necessary:

- (1) To provide for emergency management by the State, and to authorize the creation of local organizations for emergency management in the counties of the State;
- (2) To confer upon the governor and upon the mayors of the counties of the State the emergency powers necessary to prepare for and respond to emergencies or disasters;
- (3) To provide for the rendering of mutual aid among the counties of the State and with other states and in cooperation with the federal government with respect to the carrying out of emergency management functions; and
- (4) To provide programs, in cooperation with other governmental agencies, the private sector, and nonprofit organizations, to educate and train the public to be prepared for emergencies and disasters.

(b) It is further declared to be the purpose of this chapter and the policy of the State that all emergency management functions of this State and its counties be coordinated to the maximum extent with the comparable functions of the federal government, including its various departments, and agencies of other states and localities, and with private-sector and nonprofit organizations, to the end that the most effective preparation and use may be made of the nation's personnel, resources, and facilities for dealing with any emergency or disaster that may occur.

(c) It is the intent of the legislature to provide for and confer comprehensive powers for the purposes stated herein. This chapter shall be liberally construed to effectuate its purposes; provided that this chapter shall not be construed as conferring any power or permitting any action which is

inconsistent with the Constitution and laws of the United States, but, in so construing this chapter, due consideration shall be given to the circumstances as they exist from time to time. This chapter shall not be deemed to have been amended by any act hereafter enacted at the same or any other session of the legislature, unless this chapter is amended by express reference. [L 2014, c 111, pt of §2]

" **[§127A-2] Definitions.** When used in this chapter, unless the context otherwise requires:

"Administrator" means the administrator of the Hawaii emergency management agency established by section 127A-3.

"Agency" means the Hawaii emergency management agency established by section 127A-3.

"Council" means the Hawaii advisory council on emergency management as established by section 127A-4.

"County" means the city and county of Honolulu, and the counties of Hawaii, Kauai, and Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this chapter.

"County emergency management agency" means a county-level entity responsible for emergency management within the respective counties as established in section 127A-5.

"Critical infrastructure" means those systems, facilities, and assets, whether physical or virtual, so vital to a county, the State, or the nation that the incapacity or destruction of such systems, facilities, or assets would have a debilitating impact on national, state, or county security; economic security; public health or safety; or any combination of those matters.

"Director" means the director of the Hawaii emergency management agency established by section 127A-3, and who is the same as the adjutant general as provided in section 26-21.

"Disaster" means any emergency, or imminent threat thereof, which results or may likely result in loss of life or property and requires, or may require, assistance from other counties or states or from the federal government.

"Disaster relief" means any physical or financial assistance provided to individuals or areas in the aftermath of an emergency or disaster.

"Emergency" means any occurrence, or imminent threat thereof, which results or may likely result in substantial injury or harm to the population or substantial damage to or loss of property.

"Emergency management" means a comprehensive integrated system at all levels of government, and also in the private sector, which develops and maintains an effective capability to

prevent, prepare for, respond to, mitigate, and recover from emergencies or disasters.

"Emergency management functions" mean those tasks required to prepare for and carry out actions to prevent, prepare for, respond to, mitigate, and recover from emergencies and disasters, and includes management of resources, personnel, and facilities and administration of economic controls as needed to provide relief in anticipation of, during, or after emergencies or disasters.

"Emergency period" means the dates covered by a proclamation issued by the governor declaring a state of emergency or by a mayor declaring a local state of emergency.

"Evacuation" means the immediate and rapid movement of individuals and animals away from the threat or actual occurrence of any hazard, emergency, or disaster, and includes vertical evacuation, which is moving to a higher floor or higher ground in order to gain safety above the height of expected inundation by water as recommended by the county emergency management agency.

"Facilities", except as otherwise provided in this chapter, includes any infrastructure, buildings and other structures, shelters, land, roads, highways, thoroughfares, walks, roadways, bridges, public rights of way, and any appurtenant facilities, structures, and materials.

"Hazard" means an event or condition of the physical environment that results or may likely result in damage to property or injuries or death to individuals and which may result in an emergency or disaster.

"Laws" includes ordinances, rules, regulations, and orders prescribed under federal, state, or county laws or ordinances and having the force and effect of law.

"Local state of emergency" means the occurrence in any part of a county that requires efforts by the county government to save lives, and to protect property, public health, welfare, or safety in the event of an emergency or disaster, or to reduce the threat of an emergency or disaster.

"Materials" includes medicines, supplies, products, commodities, articles, equipment, machinery, and component parts.

"Necessary" means and refers to such means, measures, or other actions or determinations as are required to be taken in the opinion of the governor or governor's authorized representative or a mayor or the mayor's authorized representative.

"State of emergency" means an occurrence in any part of the State that requires efforts by state government to protect property, public health, welfare, or safety in the event of an

emergency or disaster, or to reduce the threat of an emergency or disaster, or to supplement the local efforts of the county.

"States" include the several states, the District of Columbia, and the possessions of the United States, and also includes the State of Hawaii, and to the extent authorized by or under federal law, foreign countries and their provinces and states.

"Traffic control" includes plans, regulations, devices, and actions for the control of traffic to provide for the rapid and safe movement or evacuation of individuals, vehicles, and materials for emergency management, and for the movement and cessation of movement of any pedestrians and vehicular traffic during, before, and after emergencies and disasters, emergency management exercises and training, or other emergency management actions or activities. [L 2014, c 111, pt of §2]

" **[§127A-3] Hawaii emergency management agency.** (a) There is established within the department of defense the Hawaii emergency management agency. The adjutant general shall serve as the director of Hawaii emergency management and, subject to the direction and control of the governor, shall oversee the agency.

(b) There shall be an administrator of emergency management who shall be appointed, and may be removed, by the director, and who shall have at least three years of experience leading emergency management efforts at the local, state, or federal level. The administrator of emergency management shall be the civilian head of and responsible for the day-to-day operations of the agency. The administrator of emergency management shall report to the director. The administrator of emergency management shall, in the absence of the director, have all the duties and responsibilities of the director, and shall report directly to the governor. The administrator of emergency management shall not be subject to chapter 76.

(c) The director may, from funds allotted therefor, employ technical, clerical, administrative, and other personnel and make such expenditures as may be necessary.

(d) The director shall coordinate the activities of the agency with all county emergency management agencies, other state agencies, other states, or federal agencies involved in emergency management activities, and all organizations for emergency management within the State, whether public or private, and shall maintain liaison and cooperate with all county emergency management agencies, other state agencies, other states, or federal agencies involved in emergency management activities as provided in this chapter.

(e) The agency shall perform emergency management functions within the territorial limits of the State; support county emergency management agencies as requested; coordinate all resource support to the counties; ensure that emergency management plans across the State are coordinated with each other and other state, federal, and local organizations; oversee and coordinate the statewide outdoor siren warning system; monitor and issue alerts and warnings; and coordinate emergency and disaster response and recovery activities. [L 2014, c 111, pt of §2]

" **[\$127A-4] Hawaii advisory council on emergency management.** There shall be a Hawaii advisory council on emergency management, which shall be attached to the agency for administrative purposes, and which shall consist of seven members nominated and, by and with the advice and consent of the senate, appointed by the governor. The governor shall designate the chairperson of the council. The council, at the request of the governor, shall confer with and advise the governor in regard to matters pertaining to emergency management. Members of the council shall receive no compensation but shall be reimbursed for travel and other reasonable and necessary expenses incurred in carrying out their duties relating to the council. Persons holding public office or employment in the state government, or any political subdivision thereof, are eligible for appointment to the council. [L 2014, c 111, pt of §2]

" **[\$127A-5] County emergency management agency.** (a) The mayor of each county shall have direct responsibility for emergency management within the county, including the organization, administration, and operation of a county emergency management agency.

(b) Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized, coordinate all emergency management plans within the county, and cooperate as closely as possible with the agency and emergency management agencies in the other counties in all aspects of emergency management.

(c) Each county shall be responsible for the establishment, naming, and operation of a county emergency management agency under the mayor's direction, and shall enact ordinances to establish the county emergency management agency and ensure that the mayor and the county's emergency management agency have the powers necessary to receive state and federal funds and carry out the functions of this chapter at the county

level. The ordinances shall comply with powers established under sections 127A-12 and 127A-13.

(d) Each county, under the mayor's direction, shall make appropriations and authorize expenditures for the purposes of this chapter, including for use as matching funds for federal aid, out of the normal revenues or fund balances or surpluses of the counties, notwithstanding any legal restrictions upon the purposes for which the funds may be expended, except that pension and retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, trust funds, loan funds, and funds received from the federal government or from any person for specific purposes shall not be affected.

(e) Each county, under the mayor's direction, shall provide a county-level administrator or director of the county emergency management agency, and technical, administrative, and other personnel; office space; furniture; equipment; supplies; and funds necessary to carry out the purposes of this chapter.

(f) The administrator or director of the county emergency management agency shall be subject to chapter 76.

(g) Each county, under the mayor's direction, shall, in order to ensure continuity of government during an emergency period, establish a procedure for the appointment and designation of stand-by officers for the mayor and the county legislative body during an emergency period, who shall serve in the event of the unavailability of the officers for whom they are standing-by.

(h) Each county, under the mayor's direction, shall establish and maintain an emergency operations center, as the place from where emergencies and disasters shall be managed, and staff it appropriately.

(i) Each county, under the mayor's direction, shall coordinate, develop, and implement an emergency operations plan for the county. [L 2014, c 111, pt of §2]

" **[\$127A-6] Emergency reserve corps.** (a) The director may establish an emergency reserve corps comprising trained specialists to support state and county emergency or disaster requirements. The emergency reserve corps may include:

- (1) Any employee of the State or county;
- (2) Any employee hired specifically for staffing during emergency periods and exercises who shall be hired and compensated without regard to chapters 76, 78, and 88; and
- (3) Any volunteer,

who shall be detailed in accordance with this chapter.

Emergency reserve corps positions shall be authorized and

managed by the agency and do not need the approval of the governor.

(b) The emergency reserve corps shall support state emergency or disaster requirements and, if requested by a county emergency management agency, supplement the county emergency management agency staff. The emergency reserve corps may be mobilized during, or in advance of, emergencies or disasters, or for emergency management exercises and training events. Emergency reserve corps members shall attend a minimum of four days of paid training per year. [L 2014, c 111, pt of §2]

" **[\$127A-7] State warning point.** (a) The agency shall establish and operate a communications and warning center that shall be known as the state warning point. The state warning point shall be continually staffed by the agency to monitor warning systems and devices and shall have the ability to provide timely warning and notification to government officials, county warning points and emergency operations centers and, when directed, the general public.

(b) Each county shall establish and operate a communications and warning center that shall be known as a county warning point. The county warning points shall be continually staffed by the respective counties and shall be capable of communicating with the state warning point at all times. The county warning points shall provide timely warning and notification to government officials and the public, when directed. [L 2014, c 111, pt of §2]

" **[\$127A-8] Status and rights of personnel.** (a) All state and county officials, officers, and employees are considered "emergency workers" and shall perform functions as determined by their respective state or county department director during emergencies or disasters.

(b) If any state or county official, officer, or employee is engaged in carrying out this chapter in lieu of the official, officer, or employee's regular office or employment, the amount of the official, officer, or employee's compensation shall not be adversely affected, and the official, officer, or employee's rights in or under the laws relating to vacation and leave, the retirement system, civil service or the like, shall not be adversely affected.

(c) All persons, including volunteers whose services have been accepted by authorized persons, while engaged in the performance of duty pursuant to this chapter, including duty performed during exercises and training, shall be deemed state employees if the performance of duty is for the State, or county employees if the performance of duty is for the county, and

shall have the powers, duties, rights, and privileges of such in the performance of their duties, except as may be prescribed by or under the authority of the governor or the mayor, pursuant to this chapter.

(d) In case of injury or death arising out of and in the performance of duty pursuant to this chapter, including duty performed during periods of training, all persons having the status of official, officer, or employee of the State or county, pursuant to this section, and their dependents, shall be entitled to all of the benefits provided in chapter 386, including medical services and supplies, and in case of injury or death, no public official shall be excluded from the coverage of chapter 386 by reason of being an elected official. For the purposes of the benefits, average weekly wages shall be computed upon the basis set forth in section 386-51, or upon the basis of earnings from the usual employment of the person, or upon the basis of earnings at the rate of \$20 per week, whichever is most favorable to the claimant or claimants. The costs thereof, in cases of state employees, shall be a charge upon the state insurance fund and, in cases of county employees, shall be a charge upon the county insurance fund; provided that the governor or mayor may effect such insurance in respect of the obligations assumed pursuant to this section and as may be available under any mutual aid agreement or act of Congress. Nothing herein shall adversely affect the right of any person to receive any benefits or compensation under any act of Congress. [L 2014, c 111, pt of §2]

" **[\$127A-9] Immunities; rights.** (a) None of the following:

- (1) The State;
- (2) Any county;
- (3) Any owner or operator of a public utility or critical infrastructure facility;
- (4) Private-sector or nonprofit organizations; or
- (5) Except in cases of wilful misconduct, gross negligence, or recklessness, persons engaged in emergency management functions pursuant to this chapter, including volunteers whose services are accepted by any authorized person,

shall be civilly liable for the death of or injury to persons, or property damage, as a result of any act or omission in the course of the employment or duties under this chapter.

(b) No act or omission shall be imputed to the owner of any vehicle by reason of the owner's ownership thereof; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section 41D-8 to the extent of the

insurance, and, unless specifically provided, insurance effected under section 41D-8 shall not include coverage of such risk during an emergency period. The governor may insure vehicles owned by the State or in the custody and use of the Hawaii emergency management agency; provided that insurance effected under section 41D-8 on vehicles used for purposes other than emergency management shall not be required to include coverage of the insured vehicle against the risk incurred or which would be incurred under this chapter as a result of the use of the insured vehicle for emergency management.

(c) Members of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on any duty or service performed under or in pursuance of an order or call of the President of the United States or any proper authority, and the National Guard from any other state ordered into service by any proper authority, to assist civil authorities engaged in emergency functions pursuant to this chapter shall not be liable, civilly or criminally, for any act done or caused by them in pursuance of duty in such service. [L 2014, c 111, pt of §2]

" **[\$127A-10] Political activity prohibited.** No organization for emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. [L 2014, c 111, pt of §2]

" **[\$127A-11] Powers on whom conferred; delegation of powers.**

(a) Except as otherwise expressly provided, all of the powers conferred by this chapter are conferred on the governor or mayor, as applicable. The governor or mayor may delegate any of these powers to governmental, private-sector, and nonprofit agencies and organizations, officials, officers, employees, and other individuals created, appointed, or employed under, or engaged in carrying out this chapter; provided that the following powers shall be retained by the governor or mayor, as applicable:

- (1) Proclaiming a state of emergency or local state of emergency, proclaiming a state of emergency or local state of emergency terminated, or making any other proclamation provided for by this chapter;
- (2) Prescribing rules having the force and effect of law; and
- (3) Making allotments of funds appropriated or available for the purposes of this chapter.

Unless otherwise directed by the governor or mayor, all of the powers pertaining to emergency management authorized to be delegated by the governor or mayor shall be deemed to have been

delegated by the governor to the director of Hawaii emergency management and by the mayor to the administrator or director of the county emergency management agency, as applicable, and the administrator or director of the county emergency management agency, respectively, shall have the authority to further delegate any of these powers to any agency or person to whom the governor or mayor could have directly delegated such powers.

(b) The powers conferred upon the governor or mayor by this chapter are in addition to any other powers or authority conferred upon the governor or mayor by the laws of the United States and of the State or county for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers or authority. [L 2014, c 111, pt of §2]

" **[\$127A-12] Emergency management powers, in general.** (a) The governor or mayor, as applicable, may exercise the following powers pertaining to emergency management:

- (1) Prepare comprehensive plans and programs for the protection of the State or county against all hazards, which shall be integrated into and coordinated with the emergency management plans of the State, counties, the federal government, other states, and private-sector and nonprofit organizations;
- (2) Identify emergency workers required to report for duty as directed by the department head regardless of the availability of any type of leave;
- (3) Institute training, preparedness, and public-information programs in coordination with the State, counties, the federal government, other states, and private-sector and nonprofit organizations;
- (4) Provide or authorize suitable insignia of authority for all authorized emergency management personnel; and
- (5) Direct or control as may be necessary for emergency management:
 - (A) Alerts, warnings, notifications, activations, exercises, drills, and tests;
 - (B) Warnings and signals for alerts or exercises, and any type of warning device, system, or method to be used in connection therewith;
 - (C) Partial or full mobilization of personnel for exercises or training, in advance of, or in response to, an actual emergency or disaster; and
 - (D) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after

alerts, exercises, training, emergencies, or disasters.

(b) The governor may exercise the following powers pertaining to emergency management:

- (1) Support requests from a mayor for assistance in preparing for, responding to, and recovering from any emergency or disaster or threat thereof;
- (2) Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government, to the President of the United States, the armed forces, or to the emergency management agency of the United States;
- (3) Enter into, participate in, or carry out mutual aid agreements or compacts for emergency management or emergency management functions with the federal government and with other states;
- (4) Sponsor and develop mutual aid plans and agreements for emergency management between the State, one or more counties, and other governmental, private-sector, and nonprofit organizations, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services; emergency housing; police services; health, medical, and related services; firefighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary;
- (5) Take possession of, use, manage, control, and reallocate any public property of the State, real or personal, required by the governor for the purposes of this chapter, including airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken, the governor may make such provision for the temporary accommodation of the government service affected thereby as the governor may deem advisable;
- (6) Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other private-sector and nonprofit organizations that may be made available;

- (7) Receive, expend, or use contributions or grants, which shall be deemed to be trust funds, in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the state treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available; and apply the provisions of chapter 29 in cases of federal aid, even though not in the form of money. The contributions or grants are appropriated for the purposes of this chapter, or for the special purposes;
- (8) Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for emergency management; and to procure federal aid therefor whenever feasible. Chapter 103D and sections 103-50, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any emergency management functions of the governor to the extent that the governor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of those functions, or that compliance therewith is impracticable due to existing conditions;
- (9) Provide for the appointment, employment, training, equipping, and maintaining with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 78, and 88, of such agencies, officers, and other persons as the governor deems necessary to carry out the purposes of this chapter; to determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to provisions of this chapter, to provide for the interchange of personnel, by detail, transfer, or otherwise, between agencies or departments of the State;
- (10) Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the State under this chapter;
- (11) Make or authorize such contracts as may be necessary to carry out this chapter;

- (12) Establish special accounting forms and practices whenever necessary;
- (13) Require each public utility, or any person owning, controlling, or operating a critical infrastructure facility as identified by the governor, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding thereof; and provide for the protection and safeguarding of all critical infrastructure and key resources; provided that without prejudice to the generality of the foregoing two clauses, the protecting and safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the governor may prescribe;
- (14) Restrict the congregation of the public in stricken or dangerous areas or under dangerous conditions;
- (15) Direct and control the non-compulsory evacuation of the civilian population;
- (16) Order and direct government agencies, officials, officers, and employees of the State, to take such action and employ such measures for law enforcement, medical, health, firefighting, traffic control, warnings and signals, engineering, rescue, construction, emergency housing, other welfare, hospitalization, transportation, water supply, public information, training, and other emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request;
- (17) Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any emergency or disaster; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss; and make temporary restoration of public utilities and other critical infrastructure facilities in the event of an emergency or disaster;
- (18) Fix or revise the hours of government business; and
- (19) Take any and all steps necessary or appropriate to carry out the purposes of this chapter notwithstanding that those powers in section 127A-13(a) may only be exercised during an emergency period.

(c) The mayor may exercise the following powers pertaining to emergency management:

- (1) Lease, lend, or otherwise furnish, on such terms and conditions as the mayor may consider necessary to promote the public welfare and protect the interest of the county, any real or personal property of the county government, to the governor of the State, to the mayors of the other counties of the State, or to the agency;
- (2) Sponsor and develop mutual aid plans and agreements for emergency management between one or more counties, and other governmental, private-sector, or nonprofit organizations, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services; emergency housing; police services; health, medical, and related services; firefighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary;
- (3) Take possession of, use, manage, control, and reallocate any public property of the county, real or personal, required by the mayor for the purposes of this chapter, including parks, playgrounds, and other public buildings. Whenever the property is so taken, the mayor may make such provision for the temporary accommodation of the government service affected as the mayor may deem advisable;
- (4) Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other private-sector and nonprofit organizations that may be made available;
- (5) Receive, expend, or use contributions or grants, which shall be deemed to be trust funds, in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; and procure federal aid as the same may be available. The contributions or grants are appropriated for the purposes of this chapter, or for the special purposes;

- (6) Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for emergency management; and to procure federal aid therefor whenever feasible. Chapter 103D and sections 103-50, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any emergency management functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions;
- (7) Provide for the appointment, employment, training, equipping, and maintaining, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 78, and 88, of such agencies, officers, and other persons as the mayor deems necessary to carry out this chapter; to determine to what extent any law prohibiting the holding of more than one office or position of employment applies to the agencies, officers, and other persons; and subject to provisions of this chapter, to provide for the interchange of personnel, by detail, transfer, or otherwise, between agencies or departments of the county;
- (8) Make charges in such cases and in such amounts as the mayor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the county under this chapter;
- (9) Make or authorize such contracts as may be necessary to carry out this chapter;
- (10) Establish special accounting forms and practices whenever necessary;
- (11) Require each public utility, or any person owning, controlling, or operating a critical infrastructure facility as identified by the mayor, to protect and safeguard its or the person's property, or to provide for such protection and safeguarding; and provide for the protection and safeguarding of all critical infrastructure and key resources; provided that without prejudice to the generality of the foregoing two clauses, the protection and safeguarding may include the regulation or prohibition of public entry

- thereon, or the permission of the entry upon such terms and conditions as the mayor may prescribe;
- (12) Restrict the congregation of the public in stricken or dangerous areas or under dangerous conditions;
 - (13) Direct and control the non-compulsory evacuation of the civilian population of the county;
 - (14) Order and direct government agencies, officials, officers, and employees of the county, to take such action and employ such measures for law enforcement, medical, health, firefighting, traffic control, warnings and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the mayor as the mayor may request;
 - (15) Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any emergency or disaster; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss; and make temporary restoration of public utilities and other critical infrastructure facilities in the event of an emergency or disaster;
 - (16) Fix or revise the hours of county government business; and
 - (17) Take any and all steps necessary or appropriate to carry out the purposes of this chapter notwithstanding that those powers in section 127A-13(b) may only be exercised during an emergency period. [L 2014, c 111, pt of §2]

" **[§127A-13] Additional powers in an emergency period.** (a) In the event of a state of emergency declared by the governor pursuant to [section] 127A-14, the governor may exercise the following additional powers pertaining to emergency management during the emergency period:

- (1) Provide for and require the quarantine or segregation of persons who are affected with or believed to have been exposed to any infectious, communicable, or other disease that is, in the governor's opinion, dangerous to the public health and safety, or persons who are the source of other contamination, in any case where,

in the governor's opinion, the existing laws are not adequate to assure the public health and safety; provide for the care and treatment of the persons; supplement the provisions of sections 325-32 to 325-38 concerning compulsory immunization programs; provide for the isolation or closing of property which is a source of contamination or is in a dangerous condition in any case where, in the governor's opinion, the existing laws are not adequate to assure the public health and safety, and designate as public nuisances acts, practices, conduct, or conditions that are dangerous to the public health or safety or to property; authorize that public nuisances be summarily abated and, if need be, that the property be destroyed, by any police officer or authorized person, or provide for the cleansing or repair of property, and if the cleansing or repair is to be at the expense of the owner, the procedure therefor shall follow as nearly as may be the provisions of section 322-2, which shall be applicable; and further, authorize without the permission of the owners or occupants, entry on private premises for any such purposes;

- (2) Relieve hardships and inequities, or obstructions to the public health, safety, or welfare, found by the governor to exist in the laws and to result from the operation of federal programs or measures taken under this chapter, by suspending the laws, in whole or in part, or by alleviating the provisions of laws on such terms and conditions as the governor may impose, including licensing laws, quarantine laws, and laws relating to labels, grades, and standards;
- (3) Suspend any law that impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel;
- (4) In the event of disaster or emergency beyond local control, or an event which, in the opinion of the governor, is such as to make state operational control necessary, or upon request of the local entity, assume direct operational control over all or any part of the emergency management functions within the affected area;
- (5) Shut off water mains, gas mains, electric power connections, or suspend other services, and, to the extent permitted by or under federal law, suspend electronic media transmission;

- (6) Direct and control the mandatory evacuation of the civilian population;
- (7) Exercise additional emergency functions to the extent necessary to prevent hoarding, waste, or destruction of materials, supplies, commodities, accommodations, facilities, and services, to effectuate equitable distribution thereof, or to establish priorities therein as the public welfare may require; to investigate; and notwithstanding any other law to the contrary, to regulate or prohibit, by means of licensing, rationing, or otherwise, the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution thereof, and any business or any transaction related thereto;
- (8) Suspend section 8-1, relating to state holidays, except the last paragraph relating to holidays declared by the president, which shall remain unaffected, and in the event of the suspension, the governor may establish state holidays by proclamation;
- (9) Adjust the hours for voting to take into consideration the working hours of the voters during the emergency period, and suspend those provisions of section 11-131 that fix the hours for voting, and fix other hours by stating the same in the election proclamation or notice, as the case may be;
- (10) Assure the continuity of service by critical infrastructure facilities, both publicly and privately owned, by regulating or, if necessary to the continuation of the service thereof, by taking over and operating the same; and
- (11) Except as provided in section 134-7.2, whenever in the governor's opinion, the laws of the State do not adequately provide for the common defense, public health, safety, and welfare, investigate, regulate, or prohibit the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution of, as well as any transaction related to, explosives, firearms, and ammunition, inflammable materials and other objects, implements, substances, businesses, or services of a hazardous or dangerous character, or particularly capable of misuse, or obstructive of or tending to obstruct law enforcement, emergency management, or military operations, including intoxicating liquor and the liquor business; and authorize the seizure and forfeiture of any such objects, implements, or substances unlawfully possessed, as provided in this chapter.

(b) In the event of a local state of emergency declared by the mayor pursuant to [section] 127A-14, the mayor may exercise the following additional powers pertaining to emergency management during the emergency period:

- (1) Relieve hardships and inequities, or obstructions to the public health, safety, or welfare, found by the mayor to exist in the laws of the county and to result from the operation of federal programs or measures taken under this chapter, by suspending the county laws, in whole or in part, or by alleviating the provisions of county laws on such terms and conditions as the mayor may impose, including county licensing laws, and county laws relating to labels, grades, and standards;
- (2) Suspend any county law that impedes or tends to impede or be detrimental to the expeditious and efficient execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel;
- (3) Shut off water mains, gas mains, electric power connections, or suspend other services; and, to the extent permitted by or under federal law, suspend electronic media transmission;
- (4) Direct and control the mandatory evacuation of the civilian population; and
- (5) Exercise additional emergency functions, to the extent necessary to prevent hoarding, waste, or destruction of materials, supplies, commodities, accommodations, facilities, and services, to effectuate equitable distribution thereof, or to establish priorities therein as the public welfare may require; to investigate; and any other county law to the contrary notwithstanding, to regulate or prohibit, by means of licensing, rationing, or otherwise, the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution thereof, and any business or any transaction related thereto. [L 2014, c 111, pt of §2]

" **[§127A-14] State of emergency.** (a) The governor may declare the existence of a state of emergency in the State by proclamation if the governor finds that an emergency or disaster has occurred or that there is imminent danger or threat of an emergency or disaster in any portion of the State.

(b) A mayor may declare the existence of a local state of emergency in the county by proclamation if the mayor finds that

an emergency or disaster has occurred or that there is imminent danger or threat of an emergency or disaster in any portion of the county.

(c) The governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable. This section shall not limit the power and authority of the governor under section 127A-13(a)(4).

(d) A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first. [L 2014, c 111, pt of §2]

" **§127A-15 Proclamations, how made; service of papers.**

(a) Every proclamation of the governor or mayor for which provision is made by this chapter, shall be promulgated by posting on the applicable state or county emergency management agency website and by means calculated to bring its contents to the attention of the general public, including by official announcement by means of television or radio broadcast, or both, or by Internet, or such other means as may be available. The proclamation shall remain posted on the agency website until the state of emergency terminates automatically or by subsequent proclamation.

(b) Any process, notice, or order, service of which is provided for by this chapter, may be served by any law enforcement officer or person authorized by the governor or mayor, any other provision of law to the contrary notwithstanding. [L 2014, c 111, pt of §2]

" **§127A-16 Major disaster fund.** (a) The director shall submit requests to the legislature to appropriate from the general revenues of the State sufficient moneys as may be necessary for expenditure by or under the direction of the governor for immediate relief in response to an emergency or disaster in any part of the State; provided that:

- (1) The governor has issued a proclamation of a state of emergency;
- (2) The governor may not expend in excess of \$5,000,000 for immediate relief as a result of any single emergency or disaster; and
- (3) In addition to the funds in paragraph (2), an additional \$5,000,000 may be made available solely for the purpose of matching federal disaster relief funds

when these funds become available to the State following a presidential disaster declaration. In expending the moneys, the governor may allot any portion thereof to any agency, office, or employee of the State or a county for the most efficient relief for the population. Notwithstanding this subsection, the only exception to paragraphs (1), (2), and (3) is that the director may use up to \$100,000 per year to support emergency reserve corps training.

(b) No later than one month after any allotment by the governor or the expenditure of any fund moneys, the director shall report to the legislature on the purpose of the allotment or expenditure.

(c) Federal reimbursement moneys for disaster relief shall be deemed to be trust moneys and may be deposited into a trust account with and under the control of the department of defense. These moneys and any interest earned thereon shall be used for the purpose identified in subsection (a) and shall not lapse to the general fund. [L 2014, c 111, pt of §2; am L 2015, c 129, §2]

" **[§127A-17] Allotments.** (a) There shall be available for allotment by the governor under this chapter:

- (1) Any moneys appropriated for the purposes of this chapter, or reappropriated pursuant to subsection (b) and any unexpended moneys appropriated for emergency management or disaster relief or administration thereof by any act, but only within the scope and purposes of the appropriations so made by the legislature;
- (2) Contributions, as provided by section 127A-12; and
- (3) The governor's contingent fund.

(b) Any sums realized under this chapter from the sale of property by the State, or from work performed, services rendered, or accommodations or facilities furnished by the State, or from insurance against damage or loss of property the premiums for which have been paid by the State under this chapter, shall be deemed to be trust funds for the purposes of this chapter and may be expended or allotted in the same manner as other appropriations made by or available for the purposes of this chapter.

(c) The governor may allot any moneys appropriated or available for the purposes of this chapter, to any agency, officer, or employee, created, appointed, or employed under this chapter, or to any government agency, officer, or employee of the State or a county, to whom powers or duties have been delegated pursuant to this chapter, to be expended in carrying out the provisions of this chapter, and in the case of county

agencies, officers, or employees, to order the allotment paid over to be held, disbursed, and accounted for as other county funds or as the governor shall provide.

(d) In the event of a deficit in the general fund of the State, any appropriation made or available for the purposes of this chapter and needed for allotment under this chapter shall take priority over other appropriations from the general fund.

(e) Any appropriation made or available for the purposes of this chapter may be expended notwithstanding the existence of a specific or other appropriation for the same or a like purpose, and without prejudice to the expenditure of the other appropriation. The powers granted by this section are in addition to, and not restrictive of, the powers granted by any other section.

(f) Any order by the governor made pursuant to this section may be amended or revoked by the governor. [L 2014, c 111, pt of §2]

" **[\$127A-18] Mitigation of hazardous situations.** (a) Even in the absence of an emergency or disaster, the governor may authorize designated state employees, agents, contractors, or representatives to enter private property at reasonable times to mitigate situations deemed by the governor to be hazardous to the health and safety of the public; provided that this section shall be applicable only to the following actions:

- (1) Cutting, trimming, or removing dangerous trees or branches that pose a hazard to other properties;
- (2) Stabilizing or removing unstable rock and soil hazards; or
- (3) Cleaning streams and waterways to mitigate or prevent flooding or other hazards;

provided further that at least ten days' written notice shall be provided to the landowner and to the occupier of the private property of the governor's intention to authorize designated state employees, agents, contractors, or representatives to enter the property to mitigate the hazardous situation; provided further that the landowner or occupier shall be given a reasonable opportunity to mitigate the hazardous situation without assistance of the State before designated state employees, agents, contractors, or representatives may enter the property.

(b) Written notice sent to the landowner's last known address by certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. If land ownership cannot be determined, notice shall be given once in a daily or weekly publication of general circulation in the county in which any action or proposed action will be taken.

(c) If entry is refused, the governor may apply to the district court in the circuit in which the property is located for a warrant to enter the premises. The district court may issue a warrant directing the chief of the appropriate county police to assist the governor in gaining entry onto the premises during regular working hours or at other reasonable times.

(d) The governor may seek recovery and reimbursement, by appropriate proceedings, of all costs and expenses incurred in the mitigation of a hazardous situation under this section, and any costs and expenses imposed against any landowner shall be a lien upon the landowner's property.

(e) This section shall take effect only upon authorization and funding for personnel to administer the program. [L 2014, c 111, pt of §2]

" **[\$127A-19] Shelters.** (a) The governor may establish guidelines for providing suitable arrangements and accommodations for the sheltering of the public and the sheltering of pet animals in public shelters under this chapter.

(b) County emergency management agencies shall identify, in coordination with private and nonprofit organizations engaged in emergency management functions relating to providing shelter or the management or operation of a public shelter under this chapter, locations and facilities suitable for the sheltering of the public and locations and facilities suitable for the sheltering of pet animals.

(c) The administrator or director of the county emergency management agency may identify, in coordination with private owners, operators, or controllers of real property, private locations and facilities that are suitable for use as shelters of the public or of pet animals.

(d) A public shelter identified for the sheltering of pet animals pursuant to subsection (b) need not be subject to guidelines developed for public shelters, unless the particular shelter has been specifically identified as a shelter for both pet animals and the public.

(e) For purposes of this section, "pet animal" shall have the same meaning as defined in section 711-1100.

(f) For purposes of this section, "shelter" includes any structure, excavation, or other facility or item used or useful for the protection of persons. [L 2014, c 111, pt of §2]

" **[\$127A-20] Immunity from liability of private shelter.**

(a) Any individual, partnership, firm, society, unincorporated association, joint venture group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, or other legal entity whether doing

business for itself or in a fiduciary capacity, owning or controlling real property, that voluntarily and without compensation grants a license or privilege for, or otherwise permits, the designation by the emergency management agency of the county in which the building is located for the use of the property, in whole or in part, for the purpose of sheltering persons during emergencies and disasters, shall, together with its successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person or damage to any personal property on the property of the licensor in connection with the use of the licensed premises for the purposes designated.

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

- (1) Any compensation or consideration paid by or on behalf of any guest or person for transient accommodation lodging;
- (2) Any compensation or consideration paid for any patient, resident, or ward present or residing in any hospital, community-based care home, home-based care home, or healthcare agency of any type licensed by the department of health or the department of human services and used as a private shelter under this section; provided that the protections afforded by this section shall not extend beyond the use of the private shelter under this section for any other duty or standard of care owed to any patient, resident, or ward; and
- (3) Any compensation or consideration paid by or on behalf of any minor or student of any age in any day care, preschool, elementary school, middle school, or any other educational facility used as a private shelter under this section. [L 2014, c 111, pt of §2]

" **[\$127A-21] Notice of requisition.** (a) The governor or mayor may requisition and take over any materials, facilities, or real property or improvements, required for the purposes of this chapter, or requisition and take over the temporary use thereof. The requisition shall be made by serving notice upon any person found in occupation of the premises or having the property in the person's custody, possession, or control; provided that a like notice shall also be served upon any person who has filed with the governor or mayor, or with such person as the governor or mayor may designate for the purpose, a request for notice with respect to the property; provided further that whenever all persons entitled to compensation for the property have not been served in the manner aforesaid, the governor or

mayor shall publish a notice of the requisition at the earliest practicable date.

(b) A requisition shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency in the State or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first. [L 2014, c 111, pt of §2]

" **[\$127A-22] Determination of compensation.** (a) Whenever the governor or mayor requisitions and takes over any property or the temporary use thereof, the owner, or other person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor or mayor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments.

(b) If any person is unwilling to accept, as full and complete compensation for the property or use thereof, the sum determined by the governor or mayor, the person shall be paid seventy-five per cent of the sum determined by the governor or mayor. The person shall also be entitled to sue the State or county for such additional sum as, when added to the sum already received by the person, the person may consider fair and just compensation for such property or use, in the manner provided by chapter 661 for actions against the State and any other applicable chapter for actions against the county. Any suit under this section shall be instituted within two years after the requisition in the case of the taking of real property in fee simple, or within one year after the requisition in all other cases, subject to sections 657-13 to 657-15, which are hereby made applicable to such a suit; except that no more than six months shall be allowed for the bringing of a suit after the appointment of a conservator of a person under disability, or the removal of the disability, or after the appointment of personal representatives. Recovery shall be confined to the fair market value of the property or its fair rental value, as the case may be, without any allowance for prospective profits, or punitive or other damages. Whenever the owner of property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no conservator or personal representative has been appointed, the State, acting through the attorney general, may apply for the appointment of a conservator or for the appointment of a personal representative. [L 2014, c 111, pt of §2]

" **[\$127A-23] Determination of damages.** The governor or mayor, as applicable, shall appoint a board of three disinterested certified appraisers with whom may be filed any claim for damages arising out of any failure to return private property, the temporary use of which was requisitioned, or which was leased, or any claim for damages arising out of the condition in which the private property is returned; provided that no such claim shall be filed for deterioration of property resulting from ordinary wear and tear, and not for any deterioration or damage, except such as is shown to have resulted from the taking or use of the property. Any claim shall be filed within thirty days after the return of the property or after the governor or mayor proclaims that all private property has been returned to the owners, whichever is earlier. The decision of the appraisers shall be final and binding upon the governor or mayor, as applicable, and the claimant; provided that either party may file a petition in the circuit court within sixty days after the rendering of a decision of the board, praying for the decision of the court upon the claim. The petition, if filed by the State, shall be entitled in the name of the State, by the attorney general, and if filed by the county, shall be entitled in the name of the county, by its corporation counsel, and shall be heard and decided by the circuit court without the intervention of a jury. If filed by any other party, the petition shall be filed, heard, and decided in the manner provided for suits against the State. Appellate review may be had, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. The court may order the joinder of other parties or may allow other parties to intervene. Any award that has become final shall be paid out of any funds available under this chapter and, if not sufficient, out of the general revenues of the State as appropriated or out of the general revenues of the county as appropriated. [L 2014, c 111, pt of §2]

" **[\$127A-24] Investigations and surveys.** (a) The governor or mayor, as applicable, may make investigations and surveys for the purpose of ascertaining facts to be used in administering this chapter, and in making the investigations and surveys, may require the making or filing of schedules or statements, under oath or otherwise; administer oaths; take evidence under oath; subpoena witnesses; make inspections; and require the production of books, papers, and records. The circuit court of any circuit or judge thereof, may enforce by proper proceedings the making or filing of the schedules or statements; the attendance and testimony of any witness subpoenaed to appear within the circuit; or the production of books, papers, and records. The

proceedings shall be in addition to, and not exclusive of, any other means or methods of enforcement.

(b) No person shall be excused from attending and testifying, or from producing books, papers, or records, before the governor or mayor or in obedience to the subpoena of the governor or mayor, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter or any rule or order thereunder, on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Witnesses shall be allowed their per diem fees and mileage as in cases in the circuit courts. [L 2014, c 111, pt of §2]

" **[\$127A-25] Rules and orders.** (a) For the purpose of carrying out any provision of this chapter, the governor may adopt rules for the State and the mayor may adopt rules for the county which may, if so stated in the rules, have the force and effect of law. Even though the rules are prescribed pursuant to a power conferred, or having mandatory or prohibitive effect, only in the event of a state of emergency or local state of emergency, the rules nevertheless may be prescribed prior thereto if stated therein to have the force and effect of law only in the event of a state of emergency or local state of emergency. All the rules, and likewise all other action taken under this chapter, shall be made and taken with due consideration of the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto. In these rules, reasonable classifications, exceptions, and exemptions may be made and granted. Such rules shall not be subject to chapter 91.

(b) The power to adopt rules having the force and effect of law shall not be deemed in derogation of the power of the governor, or the governor's duly authorized representatives, or the mayor, or the mayor's duly authorized representatives, to make orders for the enforcement of this chapter or the rules issued thereunder. The rules may provide for the making of administrative findings by duly authorized representatives, or

for the application of the rules by such representatives as the circumstances may require, and the issuance of orders therefor.

(c) Rules adopted pursuant to this chapter during a state of emergency shall be promulgated as herein provided, and may be made effective upon the promulgation. The rules shall be promulgated by posting them on the applicable state or county government website and by publishing them in a newspaper of general circulation in the State, by means calculated to bring its contents to the attention of the general public, including by official announcement by means of television or radio broadcast, or both, or by Internet, or, where only known persons are concerned, by service upon these persons by registered or certified mail or by personal service. The rules shall remain posted on the government website while in effect. When immediate promulgation of the rules is necessary in the opinion of the governor or mayor, as applicable, who shall be the sole judge thereof, in lieu of publication, the rules may be promulgated by television or radio broadcast, or both, or by Internet, or such other means as may be available; provided that the rules shall be posted and published thereafter at the earliest practicable date. [L 2014, c 111, pt of §2]

" **[\$127A-26] Forfeitures.** The forfeiture of any property unlawfully possessed, pursuant to section 127A-12(b), may be adjudged upon conviction of the offender found to be unlawfully in possession of the same, where no person other than the offender is entitled to notice and hearing with respect to the forfeiture, or the forfeiture may be enforced by an appropriate civil proceeding brought in the name of the State. The district courts and circuit courts shall have concurrent jurisdiction of the civil proceedings. Any property forfeited as provided in this section may be ordered destroyed, or may be ordered delivered for public use to such agency as shall be designated by the governor or the governor's representative, or may be ordered sold, in whole or in part, for the account of the State. [L 2014, c 111, pt of §2]

" **[\$127A-27] Preliminary or interlocutory injunctions and temporary restraining orders.** Notwithstanding any other law to the contrary, no preliminary or interlocutory injunction, or temporary restraining order, suspending, enjoining, or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, on the ground of unconstitutionality or for any other reason or reasons, any provision of this chapter or any proclamation, order, or rule prescribed, made, or issued under the authority of this chapter, shall be issued or granted by any court of the State, or by any

judge thereof, unless the application for the same is presented to a circuit judge, is heard and determined by the circuit judge sitting with two other circuit judges, and a majority of the judges concur in granting the application. When the application is presented to a judge, the judge shall immediately notify the chief justice of the supreme court of the State, or the senior associate justice in the event of the chief justice's absence or incapacity or a vacancy in the office, who shall forthwith assign two other circuit judges to sit with the circuit judge in hearing and determining the application.

The application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and the attorney general, or to the mayor and the county corporation counsel, as applicable, and to such other persons as may be defendants or respondents in the suits. In cases in which immediate irreparable damage would otherwise ensue to the petitioner, the circuit judge to whom the application is made may, after giving notice to the governor and the attorney general, or the mayor and the county corporation counsel, as applicable, and allowing them an opportunity to appear, grant a temporary stay or suspension, in whole or in part, of the operation of the statutory provision, proclamation, order, or rule. The temporary stay or suspension shall remain in force only until the hearing and determination of the application for a preliminary or interlocutory injunction, and in any event for not more than ten days from the date of the order of the judge. If the two additional circuit judges have been assigned to the case, no temporary stay or suspension shall be ordered unless a majority of the three circuit judges shall concur.

In a case of the stay or suspension, the order of the judge or judges shall contain a finding or findings, based upon evidence submitted to the judge or judges and incorporated in the order by reference thereto, that irreparable damage would result to the petitioner, and specifying the nature of the damage and why it is immediate and irreparable. The three circuit judges assigned to sit in the case may, upon a like finding and for good cause shown, appearing from reasons entered of record, continue the temporary stay or suspension for an additional ten-day period, but for only one such period unless the party against whom the order is directed consents that it may be extended for a longer period. The hearing upon an application for a preliminary or interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for hearing at the earliest practicable day.

If a temporary stay or suspension has been allowed, the application for a preliminary or interlocutory injunction shall

be set for hearing within five days after the granting of the stay or suspension. When the matter comes on for hearing, the party who obtained the temporary stay or suspension shall proceed with the application for a preliminary or interlocutory injunction. Otherwise the temporary order shall be dissolved forthwith. No extension of time shall be granted without the approval of at least two of the three judges. Upon the final hearing of any such suit, the same requirement as to judges and the same procedure as to expedition shall apply. [L 2014, c 111, pt of §2]

Revision Note

Subsection (a) designation deleted pursuant to §23G-15.

" **[\$127A-28] Enforcement of injunction proceedings; interventions.** (a) Whenever in the opinion of the governor or mayor, as applicable, any person has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of this chapter, or any rule of the governor or mayor issued under this chapter, having the force and effect of law, the governor or mayor may make application to the appropriate court in the name of the State or county for an order enjoining the acts or practices, or for such other order as will enforce compliance with the provisions, and upon a showing by the governor or mayor in such manner and form as is usual in injunction cases, that the person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other appropriate order shall be granted without bond.

(b) The governor may intervene in the name of the State or the mayor may intervene in the name of the county, as applicable, in any action or proceeding wherein a party asserts a right or relies for ground of relief or defense upon this chapter or upon any rule or order of the governor or mayor issued under this chapter, or, in the judgment of the governor or mayor, there is an issue to be presented that involves enforcement of this chapter or the rules. [L 2014, c 111, pt of §2]

" **[\$127A-29] Misdemeanors.** Any person violating any rule of the governor or mayor prescribed and promulgated pursuant to this chapter and having the force and effect of law, shall, if it shall be so stated in the rule, be guilty of a misdemeanor. Upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

Any person who intentionally, knowingly, or recklessly destroys, damages, or loses any shelter, protective device, or warning or signal device, shall if the same was installed or constructed by the United States, the State, or a county, or is the property of the United States, the State, or a county, be fined the cost of replacement, or imprisoned not more than one year, or both. The governor or mayor, may, by rule, make further provisions for the protection from misuse of shelters, protective devices, or warning and signal devices. [L 2014, c 111, pt of §2]

" **[\$127A-30] Rental or sale of essential commodities during a state of emergency; prohibition against price increases.** (a) Whenever the governor declares a state of emergency for the entire State or any portion thereof, or a mayor declares a local state of emergency for the county or any portion thereof, or when the State, or any portion thereof, is the subject of a severe weather warning:

- (1) There shall be prohibited any increase in the selling price of any commodity, whether at the retail or wholesale level, in the area that is the subject of the proclamation or the severe weather warning; and
- (2) No landlord shall terminate any tenancy for a residential dwelling unit in the area that is the subject of the proclamation or the severe weather warning, except for a breach of a material term of a rental agreement or lease, or if the unit is unfit for occupancy as defined in this chapter; provided that:
 - (A) Nothing in this chapter shall be construed to extend a fixed-term lease beyond its termination date, except that a periodic tenancy for a residential dwelling unit may be terminated by the landlord upon forty-five days' written notice:
 - (i) When the residential dwelling unit is sold to a bona fide purchaser for value; or
 - (ii) When the landlord or an immediate family member of the landlord will occupy the residential dwelling unit; or
 - (B) Under a fixed-term lease or a periodic tenancy, upon forty-five days' written notice, a landlord may require a tenant or tenants to relocate during the actual and continuous period of any repair to render a residential dwelling unit fit for occupancy; provided that:

- (i) Reoccupancy shall first be offered to the same tenant or tenants upon completion of the repair;
- (ii) The term of the fixed-term lease or periodic tenancy shall be extended by a period of time equal to the duration of the repair; and
- (iii) It shall be the responsibility of the tenant or tenants to find other accommodations during the period of repair.

(b) Notwithstanding this section, any additional operating expenses incurred by the seller or landlord because of the emergency or disaster or the severe weather, and which can be documented, may be passed on to the consumer. In the case of a residential dwelling unit, if rent increases are contained in a written instrument that was signed by the tenant prior to the declaration or severe weather warning, the increases may take place pursuant to the written instrument.

(c) The prohibitions under subsection (a) shall remain in effect until twenty-four hours after the severe weather warning is canceled by the National Weather Service; or in the event of a declaration, the later of a date specified by the governor or mayor in the declaration or ninety-six hours after the effective date and time of the declaration, unless such prohibition is continued by a supplementary declaration issued by the governor or mayor. Any proclamation issued under this chapter that fails to state the time at which it will take effect, shall take effect at twelve noon of the day on which it takes effect.

(d) In any action against a merchant, landlord, or other business for violation of the price limitations in this section, the defendant shall be deemed not to have violated this section if the defendant proves all of the following:

- (1) The violation of the price limitation was unintentional;
- (2) The defendant voluntarily rolled back prices to the appropriate level upon discovering that this section was or may have been violated; and
- (3) The defendant has instituted a restitution program for all consumers who may have paid excessive prices.

(e) Any violation of this section shall constitute unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each item sold at a price that is prohibited by this section shall constitute a separate violation.

(f) As used in this section:

"Breach of a material term" means the failure of a party to perform an obligation under the rental agreement or lease, which constitutes the consideration for entering into the contract and includes the failure to make a timely payment of rent.

"Commodity" means any good or service necessary for the health, safety, and welfare of the people of Hawaii; provided that this term shall include, but not be limited to: materials; merchandise; supplies; equipment; resources; and other articles of commerce that shall include food; water; ice; chemicals; petroleum products; construction materials; or residential dwellings.

"Fixed-term lease" means a lease for real property that specifies its beginning date and its termination date as calendar dates, or contains a formula for determining the beginning and termination dates; and the application of the formula as of the date of the agreement will produce a calendar date for the beginning and termination of the lease.

"Periodic tenancy" means a tenancy wherein real property is leased for an indefinite time with monthly or other periodic rent reserved. A periodic tenancy may be created by express agreement of the parties, or by implication upon the expiration of a fixed-term lease when neither landlord nor tenant provides the other with written notice of termination and the tenant retains possession of the premises for any period of time after the expiration of the original term.

"Unfit for occupancy" means that a residential dwelling unit has been damaged to the extent that the appropriate county agency determines that the unit creates a dangerous or unsanitary situation and is dangerous to the occupants or to the neighborhood. [L 2014, c 111, pt of §2]

" **[\$127A-31] Penalties prescribed by this chapter additional to other penalties.** If conduct prohibited by or under the authority of this chapter is also made unlawful by another or other laws, the offender may be convicted as provided in this chapter and for the violation of the other law or laws. [L 2014, c 111, pt of §2]

" **[\$127A-32] Effect of this chapter on other laws.** All laws inconsistent with the provisions of this chapter, or of any rule issued under the authority of this chapter, shall be suspended during the period of time and to the extent that the emergency or disaster exists, and may be, by the governor for all laws, or mayor for county laws, designated as so suspended. [L 2014, c 111, pt of §2]