
A BILL FOR AN ACT

RELATING TO EMERGENCY ACCESS TO SHELTER.

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

1 PART I

2 SECTION 1. While it is the policy of the legislature to
3 encourage the private sector to assist in emergencies or
4 disasters, the legislature finds that there is an added need to
5 encourage the private sector to assist in providing emergency
6 shelter during emergencies or disasters. In many cases, private
7 entities are reluctant to make facilities or property available
8 for use as a shelter because of liability concerns.

9 The purpose of this part is to prohibit the denial of
10 emergency shelter by public establishments, compensate owners of
11 public establishments to repair damages caused by persons
12 sheltered, and clarify that public establishments and their
13 agents and employees are protected from liability when providing
14 emergency shelter.

15 SECTION 2. Chapter 127A, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§127A- Public establishments; prohibition against
2 denial of shelter. (a) Whenever the State, or any portion
3 thereof, is the subject of any emergency alert that advises the
4 public to immediately seek shelter, including an alert of an
5 incoming missile, to the extent reasonably practicable and
6 compliant with law, no public establishment shall deny shelter
7 to any person who is inside the public establishment or who is
8 in the immediate vicinity of the public establishment during the
9 public establishment's normal business hours. This prohibition
10 does not extend to pets.

11 (b) The prohibition under subsection (a) shall remain in
12 effect until a federal, state, or county emergency management
13 official advises the public that the emergency condition no
14 longer exists and that it is safe to resume normal activities.

15 (c) Except in cases of willful misconduct, gross
16 negligence, or recklessness, no public establishment or any
17 employee or agent of an establishment that provides shelter
18 pursuant to subsection (a) shall be civilly liable for the death
19 of or injury to persons, or property damage, that results from
20 any act or omission in the course of providing shelter.



1 (d) Any owner of a public establishment shall be
2 financially compensated or reimbursed by the State to the extent
3 necessary to repair any documented property damage to that
4 owner's public establishment, its contents, or both, that is
5 caused by any person who sought shelter at the public
6 establishment during the emergency alert.

7 (e) A complaint involving an alleged violation of
8 subsection (a) shall be made directly to the department of the
9 attorney general.

10 (f) The department of the attorney general shall
11 investigate complaints involving public establishments that have
12 allegedly denied shelter to persons, in violation of this
13 section.

14 (g) As used in this section:

15 "Owner" has the same meaning as in section 663-10.7.

16 "Public establishment" means a business, accommodation,
17 refreshment, entertainment, recreation, or transportation
18 facility of any kind that is constructed with concrete and whose
19 goods, services, facilities, privileges, advantages, or
20 accommodations are extended, offered, sold, or otherwise made
21 available to the general public as customers, clients, or



- 1 visitors. "Public establishment" includes any:
- 2 (1) Facility providing services relating to travel or
3 transportation;
- 4 (2) Inn, hotel, motel, or other establishment that
5 provides lodging to transient guests;
- 6 (3) Restaurant, cafeteria, lunchroom, lunch counter, soda
7 fountain, or other facility principally engaged in
8 selling food for consumption on the premises of a
9 retail establishment;
- 10 (4) Shopping center or any establishment that sells goods
11 or services at retail;
- 12 (5) Establishment licensed under chapter 281 doing
13 business under a class 4, 5, 8, 9, 10, 11, or 12
14 license, as defined in section 281-31;
- 15 (6) Motion picture theater, other theater, auditorium,
16 convention center, lecture hall, concert hall, sports
17 arena, stadium, or other place of exhibition or
18 entertainment;
- 19 (7) Barber shop, beauty shop, bathhouse, swimming pool,
20 gymnasium, reducing or massage salon, or other
21 establishments providing services to the public to



1 The false alert of an inbound ballistic missile on January 13,
2 2018, raised the issue that this protection may not apply to
3 certain businesses because the persons being sheltered there may
4 be paying guests or tenants. The legislature finds that there
5 is a need to clarify that the remuneration paid to these
6 property owners does not disqualify them from the protections
7 afforded under the law.

8 The false alert also raised the issue that there may be
9 circumstances where emergency access to land, shelter, or
10 subsistence is provided to the public by owners of private
11 facilities or properties who are also in the business of selling
12 services or commodities and that liability protection may not
13 apply to these owners if they attempt to sell services or
14 incidental commodities to those people during a disaster. The
15 legislature finds that there is a need to clarify that during a
16 disaster, the owner of private property providing emergency
17 access to land, shelter, or subsistence may sell services or
18 incidental commodities during the property's use in a disaster.

19 The purpose of this part is to clarify that remuneration or
20 expectation of remuneration paid to owners of private property
21 for goods or services other than emergency access to land,



1 shelter, or subsistence, including services or incidental
2 commodities to the emergency access, does not void the exemption
3 from civil liability afforded to these owners, except where
4 owners increase the sale price of incidental commodities.

5 SECTION 4. Section 663-10.7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 " [†] §663-10.7 [†] **Exemption for providing emergency access**
8 **to land, shelter, and subsistence during a disaster.** (a) Any
9 owner of private property who in good faith provides emergency
10 access to land, shelter, or subsistence, including food and
11 water, to a person during a disaster without remuneration or
12 expectation of remuneration~~[7]~~ for the emergency access to land,
13 shelter, or subsistence shall be exempt from civil liability for
14 any injury or damage suffered by the person that resulted from
15 the owner providing [~~such~~] the emergency access to land,
16 shelter, or subsistence, unless the injury or damage was caused
17 by the gross negligence or intentional or wanton acts or
18 omissions of the owner.

19 (b) If an owner of private property, while providing a
20 person with emergency access to land, shelter, or subsistence
21 without remuneration or expectation of remuneration for the



1 emergency access, receives any remuneration for providing the
 2 person with a service or incidental commodity during the
 3 disaster, that remuneration shall not diminish or void the
 4 exemption from civil liability under subsection (a); provided
 5 that if the owner of the private property increases the sale
 6 price of any service or incidental commodity, whether at retail
 7 or wholesale, on the private property during the disaster, the
 8 exemption from liability shall be void.

9 [~~(b)~~] (c) For the purposes of this section:

10 "Disaster" means a nonroutine event that exceeds the
 11 capacity of persons in the affected area to respond to it in
 12 such a way as to save lives, preserve property, or [~~to~~] maintain
 13 the social, ecological, economic, or political stability of the
 14 affected area.

15 "Emergency" means a situation in which the life or health
 16 of a person is in jeopardy due to a disaster requiring immediate
 17 assistance.

18 "Incidental commodity" means any good necessary for the
 19 health, safety, and welfare of the people of Hawaii that is not
 20 emergency access to land, shelter, or subsistence but is
 21 incidental to the emergency access to land, shelter, or



1 subsistence. "Incidental commodity" includes materials,
2 merchandise, supplies, equipment, resources, and other articles
3 of commerce, including food, water, ice, medication, chemicals,
4 or petroleum products.

5 "Owner" means the possessor of a fee interest, or a tenant,
6 lessee, occupant, person, group, club, partnership, family,
7 organization, entity, or corporation that has control,
8 possession, or use of the land, and its members, agents,
9 partners, representatives, shareholders, and employees."

10 PART III

11 SECTION 5. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Emergencies; Disasters; Public Establishments; Shelter; Civil Liability Exemption

Description:

Prohibits public establishments from denying shelter to any person when an emergency alert advises the public to immediately seek shelter. Clarifies that any remuneration paid to owners of private property for services or incidental commodities during the disaster does not void the exemption from civil liability afforded to these owners except where owners increase the sale price of any service or incidental commodity. (HB1100 HD1)

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