

JAN 17 2020

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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, the
7 private entity is reluctant to make facilities or property
8 available to a person for use as a shelter because of liability
9 concerns.

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



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

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

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

18 (c) Except in cases of wilful misconduct, gross
19 negligence, or recklessness, no public establishment or any of
20 its agents or employees that provide shelter pursuant to
21 subsection (a) shall be civilly liable for the death of or



1 injury to persons, or property damage, that results from any act
2 or omission in the course of providing shelter.

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

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

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

16 (g) As used in this section:

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

18 "Public establishment" means a business, accommodation,
19 refreshment, entertainment, recreation, or transportation
20 facility of any kind that is constructed with safe concrete and
21 whose goods, services, facilities, privileges, advantages, or



1 accommodations are extended, offered, sold, or otherwise made
2 available to the general public as customers, clients, or
3 visitors. "Public establishment" includes but is not limited to
4 the following:

5 (1) A facility providing services relating to travel or
6 transportation;

7 (2) An inn, hotel, motel, or other establishment that
8 provides lodging to transient guests;

9 (3) A common area within a project that consists entirely
10 of time share units. For purposes of this paragraph,
11 "project" and "time share unit" shall have the same
12 meanings as in section 514E-1, and "common area"
13 includes roofs, halls, sidewalks, corridors, lobbies,
14 stairs, stairways, fire escapes, entrances and exits,
15 recreational facilities, parking areas, and reception
16 areas;

17 (4) A restaurant, cafeteria, lunchroom, lunch counter,
18 soda fountain, or other facility principally engaged
19 in selling food for consumption on the premises of a
20 retail establishment;



- 1 (5) A shopping center or any establishment that sells
- 2 goods or services at retail;
- 3 (6) An establishment licensed under chapter 281 doing
- 4 business under a class 4, 5, 8, 9, 10, 11, or 12
- 5 license, as defined in section 281-31;
- 6 (7) A motion picture theater, other theater, auditorium,
- 7 convention center, lecture hall, concert hall, sports
- 8 arena, stadium, or other place of exhibition or
- 9 entertainment;
- 10 (8) A barber shop, beauty shop, bathhouse, swimming pool,
- 11 gymnasium, reducing or massage salon, or other
- 12 establishment conducted to serve the health,
- 13 appearance, or physical condition of persons;
- 14 (9) A park, campsite, or trailer facility, or other
- 15 recreation facility;
- 16 (10) A comfort station;
- 17 (11) A mortuary or undertaking establishment; and
- 18 (12) An establishment that is physically located within the
- 19 premises of an establishment otherwise covered by this
- 20 definition, or within the premises of which is
- 21 physically located a covered establishment, and which



1 services or commodities and that the liability protection may
2 not apply to these owners if they attempt to sell services or
3 incidental commodities to those people during a disaster. The
4 legislature finds that there is a need to clarify that during a
5 disaster, the owner of private property providing emergency
6 access to land, shelter, or subsistence may sell services or
7 incidental commodities during the property's use in a disaster.

8 The purpose of this part is to clarify that remuneration or
9 expectation of remuneration paid to owners of private property
10 for goods or services other than emergency access to land,
11 shelter, or subsistence, including services or incidental
12 commodities to the emergency access, does not void the exemption
13 from civil liability afforded to these owners except where
14 owners increase the sale price of incidental commodities.

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

17 " [†] §663-10.7 [†] Exemption for providing emergency access
18 to land, shelter, and subsistence during a disaster. (a) Any
19 owner of private property who in good faith provides emergency
20 access to land, shelter, or subsistence, including food and
21 water, to a person during a disaster without remuneration or



1 expectation of remuneration^[7] for the emergency access to land,
2 shelter, or subsistence, shall be exempt from civil liability
3 for any injury or damage suffered by the person that resulted
4 from the owner providing such emergency access to land, shelter,
5 or subsistence, unless the injury or damage was caused by the
6 gross negligence or intentional or wanton acts or omissions of
7 the owner.

8 (b) If an owner of private property who, while providing a
9 person with emergency access to land, shelter, or subsistence
10 without remuneration or expectation of remuneration for the
11 emergency access, receives any remuneration for providing the
12 person with a service or incidental commodity during the
13 disaster, that remuneration shall not diminish or void the
14 exemption from civil liability under subsection (a); provided
15 that if the owner of the private property increases the sale
16 price of any such service or incidental commodity, whether at
17 retail or wholesale, on the private property during the
18 disaster, the exemption from liability shall be void.

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

20 "Disaster" means a nonroutine event that exceeds the
21 capacity of persons in the affected area to respond to it in



1 such a way as to save lives, preserve property, or to maintain
2 the social, ecological, economic, or political stability of the
3 affected area.

4 "Emergency" means a situation in which the life or health
5 of a person is in jeopardy due to a disaster requiring immediate
6 assistance.

7 "Incidental commodity" means any good necessary for the
8 health, safety, and welfare of the people of Hawaii that is not
9 emergency access to land, shelter, or subsistence but is
10 incidental to the emergency access to land, shelter, or
11 subsistence. "Incidental commodity" includes but is not limited
12 to materials, merchandise, supplies, equipment, resources, and
13 other articles of commerce that shall include food, water, ice,
14 medication, chemicals, or petroleum products.

15 "Owner" means the possessor of a fee interest, or a tenant,
16 lessee, occupant, person, group, club, partnership, family,
17 organization, entity, or corporation that has control,
18 possession, or use of the land, and its members, agents,
19 partners, representatives, shareholders, and employees.

20 "Remuneration" does not include:



- 1 (1) Any compensation or consideration paid by or on behalf
2 of any guest or person for transient accommodation
3 lodging;
- 4 (2) Any compensation or consideration paid for any
5 patient, resident, or ward present or residing in any
6 hospital, community-based care home, home-based care
7 home, or healthcare agency of any type licensed by the
8 department of health or the department of human
9 services and used as a private shelter under this
10 section; provided that the protections afforded by
11 this section shall not extend beyond the authorized
12 uses of a private shelter under this section for any
13 other duty or standard of care owed to any patient,
14 resident, or ward;
- 15 (3) Any compensation or consideration paid by or on behalf
16 of any minor or student of any age in any day care,
17 preschool, elementary school, middle school, or any
18 other education facility used as a private shelter
19 under this section; and
- 20 (4) Any compensation or consideration paid by an owner for
21 any commodity to a person being sheltered during the



S.B. NO. 2731

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S.B. NO. 2731

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 during the establishments' normal business hours, under certain conditions. Clarifies that remuneration or expectation of remuneration paid to owners of private property for goods or services other than emergency access to land, shelter, or subsistence, including services or incidental commodities to the emergency access, does not void the exemption from civil liability afforded to these owners except where owners increase the sale price of the service or incidental commodities.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

