

ACT 60

S.B. NO. 898

A Bill for an Act Relating to Civil Defense.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. One of the policies and purposes of chapter 128, Hawaii Revised Statutes (HRS), is to coordinate all state civil defense functions to the maximum extent possible with the comparable functions of the federal government (including its various departments and agencies), other states and localities, and private agencies, to allow for the most effective preparation and use of all personnel, resources, and facilities for dealing with any disaster or emergency that may occur.

The legislature finds that there is a need to amend the law regarding the liability of an owner or operator of a hospital, community-based care home, home-based care home, or healthcare agency or facility of any type, as well as day care, and educational institutions, when an owner or operator of these facilities permits the use of the property for sheltering persons during disasters and emergencies. The legislature recognizes that there is a shortage of shelter space in Hawaii and that the private industry should be encouraged to assist the public by providing shelter for those persons who by reason of existing relationships may already be in these facilities during disasters and emergencies. Under the

current law, it is unclear whether owners or operators of certain facilities are able to fully comply with the requirements of section 128-19, HRS, when providing shelter to persons in their care, custody, or charge because section 128-19, HRS, requires that shelter be made available without compensation.

The purpose of this Act is to clarify that compensation received by certain private entities for use of facilities as a private shelter is not considered compensation for the purposes of the law pertaining to immunity from liability of private shelter. This Act also includes sheltering of persons during natural or man-made disasters in the category of events that trigger limited liability for private entities that make their facilities available to the public during times of emergency.

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

“§128-19 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, ~~who~~ that voluntarily and without compensation grants a license or privilege for, or otherwise permits, the designation by the director of civil defense for the use of the whole or any part of the property for the purpose of sheltering persons during an actual, impending, mock, or practice attack, or natural or man-made disaster, 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. ~~[For purposes of this section, the consideration paid by any guest or person for transient accommodation lodging shall not be considered compensation.]~~

(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.”

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

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

(Approved April 25, 2010.)