H.B. NO. 3112

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, is that all civil defense functions of the State be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, with those of other states and localities, and with those of private agencies of every type, to the end that the most effective preparation and use may be made 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, home health agency, or health care agency or facility of any type, as well as day care, and educational institutions, when an owner or operator of these facilities permit 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 in sheltering the public by providing shelter for those persons who by reason of existing relationships may 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, Hawaii Revised Statutes, when providing shelter to persons in their care, custody, or charge because section 128-19 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 section 128-19, Hawaii Revised Statutes.

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 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 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 the 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, home health agency, or health 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. Notwithstanding, 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 on July 1, 2008.

INTRODUCED BY: Calvin K Y Say

BY REQUEST

JAN 22 2008

H.B. NO. 3112

Report Title:
Liability Exemptions; Disasters; Care Homes; Schools

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

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JUSTIFICATION SHEET

DEPARTMENT: Defense

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

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

MEANS: Amend section 128-19, HRS.

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

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

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

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GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	All state and county departments and agencies.
EFFECTIVE DATE:	July 1, 2008.