
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, no public establishment shall deny shelter to
6 any person who is inside the public establishment or who is in
7 the immediate vicinity of the public establishment. This
8 prohibition does not extend to pets.

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

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

19 (d) Any owner of a public establishment shall be
20 financially compensated or reimbursed by the State to the extent
21 necessary to repair any documented property damage to that



1 owner's public establishment, its contents, or both, that is
2 caused by any person who sought shelter at the public
3 establishment during the emergency alert.

4 (e) A complaint involving an alleged violation of
5 subsection (a) shall be made directly to the department of the
6 attorney general.

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

11 (g) As used in this section:

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

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

20 (1) Facility providing services relating to travel or
21 transportation;



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



- 1 (9) Comfort station;
- 2 (10) Mortuary or undertaking establishment; and
- 3 (11) Establishment that is physically located within the
4 premises of an establishment otherwise covered by this
5 definition, or within the premises of which is
6 physically located a covered establishment, and that
7 holds itself out as serving patrons of the covered
8 establishment.
- 9 "Public establishment" excludes any hospital or health care
10 facility."

PART II

12 SECTION 3. The legislature finds that section 663-10.7,
13 Hawaii Revised Statutes, exempts a private property owner from
14 civil liability for injury or damage that occurs when the owner
15 provides emergency access to land, shelter, or subsistence to a
16 person during a disaster; provided that the owner provides
17 assistance without remuneration or expectation of remuneration.
18 The false alert of an inbound ballistic missile on January 13,
19 2018, raised the issue that this protection may not apply to
20 certain businesses because the persons being sheltered there may
21 be paying guests or tenants. The legislature finds that there



1 is a need to clarify that the remuneration paid to these
2 property owners does not disqualify them from the protections
3 afforded under the law.

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

15 The purpose of this part is to clarify that remuneration or
16 expectation of remuneration paid to owners of private property
17 for goods or services other than emergency access to land,
18 shelter, or subsistence, including services or incidental
19 commodities to the emergency access, does not void the exemption
20 from civil liability afforded to these owners, except where
21 owners increase the sale price of incidental commodities.



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

3 "[+]§663-10.7[+] **Exemption for providing emergency access**
4 **to land, shelter, and subsistence during a disaster.** (a) Any
5 owner of private property who in good faith provides emergency
6 access to land, shelter, or subsistence, including food and
7 water, to a person during a disaster without remuneration or
8 expectation of remuneration[7] for the emergency access to land,
9 shelter, or subsistence shall be exempt from civil liability for
10 any injury or damage suffered by the person that resulted from
11 the owner providing [~~such~~] the emergency access to land,
12 shelter, or subsistence, unless the injury or damage was caused
13 by the gross negligence or intentional or wanton acts or
14 omissions of the owner.

15 (b) If an owner of private property, while providing a
16 person with emergency access to land, shelter, or subsistence
17 without remuneration or expectation of remuneration for the
18 emergency access, receives any remuneration for providing the
19 person with a service or incidental commodity during the
20 disaster, that remuneration shall not diminish or void the
21 exemption from civil liability under subsection (a); provided



1 that if the owner of the private property increases the sale
2 price of any service or incidental commodity, whether at retail
3 or wholesale, on the private property during the disaster, the
4 exemption from liability shall be void.

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

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

11 "Emergency" means a situation in which the life or health
12 of a person is in jeopardy due to a disaster requiring immediate
13 assistance.

14 "Incidental commodity" means any good necessary for the
15 health, safety, and welfare of the people of Hawaii that is not
16 emergency access to land, shelter, or subsistence but is
17 incidental to the emergency access to land, shelter, or
18 subsistence. "Incidental commodity" includes materials,
19 merchandise, supplies, equipment, resources, and other articles
20 of commerce, including food, water, ice, medication, chemicals,
21 or petroleum products.



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

PART III

7 SECTION 5. This Act does not affect rights and duties that
 8 matured, penalties that were incurred, and proceedings that were
 9 begun before its effective date.

10 SECTION 6. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 23 2019



H.B. NO. 1150

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 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.

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