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# A BILL FOR AN ACT

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RELATING TO PUBLIC SAFETY.

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

PART I

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

The purpose of this part is to prohibit the denial of emergency shelter by places of public accommodation and clarify that places of public accommodation and their agents and employees are protected from liability when providing emergency shelter.

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



1       "§127A-       Places of public accommodation; prohibition  
2 against denial of shelter.   (a)   Whenever the State, or any  
3 portion thereof, is the subject of any emergency alert that  
4 advises the public to immediately seek shelter, including an  
5 alert of an incoming missile, a place of public accommodation  
6 shall not deny shelter to any person who is inside the place of  
7 public accommodation or who is in the immediate vicinity of the  
8 place of public accommodation.

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)   A complaint involving an alleged violation of  
14 subsection (a) shall be made directly to the department of the  
15 attorney general.

16       (d)   The owner of a public accommodation that violates  
17 subsection (a) shall be subject to a civil penalty of not less  
18 than \$500 nor more than \$10,000 for each violation.   Each day of  
19 violation shall constitute a separate offense.   All penalties  
20 collected pursuant to this section shall be deposited into a  
21 trust account established pursuant to section 127A-16(e).



1       (e) Except in cases of wilful misconduct, gross  
2 negligence, or recklessness, no public accommodation or any of  
3 its agents or employees that provide shelter pursuant to  
4 subsection (a) shall be civilly liable for the death of or  
5 injury to persons, or property damage, that results from any act  
6 or omission in the course of providing shelter.

7       (f) The department of the attorney general shall  
8 investigate complaints involving places of public accommodation  
9 that have allegedly denied shelter to persons in violation of  
10 section 127A- . If the department of the attorney general  
11 determines, based on credible evidence, that a violation has  
12 occurred, the department of the attorney general shall impose  
13 and enforce the penalty provided for in subsection (d).

14       (g) As used in this section, "place of public  
15 accommodation" has the same meaning as in section 489-2."

16       SECTION 3. Section 127A-16, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§127A-16 Major disaster fund.** (a) The director shall  
19 submit requests to the legislature to appropriate from the  
20 general revenues of the State sufficient moneys as may be  
21 necessary for expenditure by or under the direction of the



1 governor for immediate relief in response to an emergency or  
2 disaster in any part of the State; provided that:

3 (1) The governor has issued a proclamation of a state of  
4 emergency;

5 (2) The governor may not expend in excess of \$5,000,000  
6 for immediate relief as a result of any single  
7 emergency or disaster; and

8 (3) In addition to the funds in paragraph (2), an  
9 additional \$5,000,000 may be made available solely for  
10 the purpose of matching federal disaster relief funds  
11 when [~~these~~] those funds become available to the State  
12 following a presidential disaster declaration.

13 In expending the moneys, the governor may allot any portion  
14 thereof to any agency, office, or employee of the State or a  
15 county for the most efficient relief for the population.

16 Notwithstanding this subsection, the only exception to  
17 paragraphs (1), (2), and (3) is that the director may use up to  
18 \$100,000 per year to support emergency reserve corps training.

19 (b) No later than one month after any allotment by the  
20 governor or the expenditure of any fund moneys, the director



1 shall report to the legislature on the purpose of the allotment  
2 or expenditure.

3 (c) Except as provided in subsection (d), federal  
4 reimbursement moneys for disaster relief shall be deemed to be  
5 trust moneys and may be deposited into a trust account with and  
6 under the control of the department of defense. [~~These~~] Those  
7 moneys and any interest earned thereon shall be used for the  
8 purpose identified in subsection (a) and shall not lapse to the  
9 general fund.

10 (d) In cases in which the department of education expends  
11 the funds appropriated to the department for purposes deemed to  
12 be reimbursable by federal reimbursement moneys for disaster  
13 relief, the federal reimbursement moneys shall not lapse to the  
14 general fund and shall be credited directly to the department of  
15 education without regard to whether the original appropriation  
16 has lapsed. [~~Such~~] Those funds shall carry over in accordance  
17 with section 37-41.5(c).

18 (e) Moneys collected by the department of the attorney  
19 general pursuant to its enforcement of section 127A- shall be  
20 deemed to be trust moneys and shall be deposited into a trust  
21 account with and under the control of the department of defense.



1 Those moneys and any interest earned thereon shall be used for  
2 the purpose identified in subsection (a) and shall not lapse to  
3 the general fund."

4 PART II

5 SECTION 4. In 2012, the legislature passed Act 291 which  
6 exempted a private property owner who provides emergency access  
7 to a person in good faith during a disaster from liability for  
8 injury or damage. The false alert of an inbound ballistic  
9 missile on January 13, 2018, raised the issue that this  
10 protection may not apply to certain businesses because those  
11 sheltering there may be paying guests or tenants. The  
12 legislature finds that there is a need to clarify that the  
13 compensation paid by guests or tenants should not disqualify  
14 these property owners from the protections afforded by the  
15 legislature.

16 The false alert also raised the issue that there may be  
17 circumstances where shelter is provided to the public in  
18 facilities or properties that are also in the business of  
19 selling commodities and that liability protection may not apply  
20 to these businesses if they attempt to sell commodities to those  
21 people being sheltered. The legislature finds that there is a



1 need to clarify that while persons are sheltered, the owner of  
2 property made available as a shelter should be allowed to sell  
3 commodities if its use as a shelter is required over a period of  
4 time.

5 The purpose of this part is to clarify that:

- 6 (1) Hotels, apartments, condominiums, hospitals,  
7 healthcare facilities, and any facility that is  
8 receiving compensation from a person sheltered there  
9 shall not be disqualified from the civil liability  
10 exemption for providing emergency access to land,  
11 shelter, and subsistence during a disaster pursuant to  
12 section 663-10.7, Hawaii Revised Statutes; and
- 13 (2) Owners of properties made available for shelter use  
14 are not excluded from the provisions of section 663-  
15 10.7, Hawaii Revised Statutes, if the owner sells  
16 commodities to those in the shelter; provided the  
17 owner is not engaged in price gouging.

18 SECTION 5. Section 663-10.7, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) For the purposes of this section:



1       "Commodity" means any good necessary for the health,  
2       safety, and welfare of the people of Hawaii; provided that this  
3       term shall include, but not be limited to: materials,  
4       merchandise, supplies, equipment, resources, and other articles  
5       of commerce that shall include food, water, ice, medication,  
6       chemicals, or petroleum products.

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

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

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 mean:





- 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 use of the  
12       private shelter under this section and do not apply to  
13       any other duty or standard of care owed to any  
14       patient, 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 educational facility used as a private shelter  
19       under this section; and
- 20       (4) Any compensation or consideration paid to an owner for  
21       any commodity by a person being sheltered during the



disaster or emergency; provided there shall be  
prohibited any increase in the selling price of any  
commodity, whether at the retail or wholesale level,  
in the private property being used as a shelter."

## PART III

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

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

**Description:**

Prohibits places of public accommodation from denying shelter to any person when an emergency alert advises the public to immediately seek shelter. Provides for a civil penalty for each violation. Provides immunity from civil liability, with certain exceptions. Clarifies that the civil liability exemption applies to facilities receiving compensation and to property owners who sell commodities in the absence of price gouging.

(HB2693 HD1)

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

