

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 PART II

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 **"S127A- 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 shall 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) An owner of a public establishment shall be
4 financially compensated or reimbursed by the State for repairing
5 any documented property damage to the owner's public
6 establishment or its contents, or both, that is caused by a
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) For the purposes of 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 the purposes of this
11 paragraph, "project" and "time share unit" have the
12 same meanings as defined in section 514E-1, and
13 "common area" includes roofs, halls, sidewalks,
14 corridors, lobbies, stairs, stairways, fire escapes,
15 entrances and exits, recreational facilities, parking
16 areas, and reception 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 holds itself out as serving patrons of the covered
2 establishment.

3 "Public establishment" does not include hospitals and health
4 care facilities."

5 PART II

6 SECTION 3. The legislature finds that section 663-10.7, Hawaii Revised Statutes, exempts a private property owner who provides emergency access to land, shelter, or subsistence to a person during a disaster without remuneration or expectation of remuneration from civil liability for injury or damage suffered by that person. The false alert of an inbound ballistic missile on January 13, 2018, raised the issue that this protection may not apply to certain businesses because those sheltering there may be paying guests or tenants. The legislature finds that there is a need to clarify that the remuneration paid to these property owners does not disqualify them from the protections afforded under the law.

18 The false alert also raised the issue that there may be circumstances where emergency access to land, shelter, or subsistence is provided to the public by owners of private facilities or properties who are also in the business of selling



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 renumeration or expectation of renumeration for the
11 emergency access, receives any renumeration for providing the
12 person with a service or incidental commodity during the
13 disaster, that renumeration 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 service or incidental commodity, whether at retail
17 or wholesale, on the private property during the disaster, the
18 exemption from liability shall be void.

19 [4b7] (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 a good necessary for the
8 health, safety, and welfare of the people of the State that is
9 not 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 including 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 PART III



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 7. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act shall take effect upon its approval.

13

INTRODUCED BY: Mike Gabbard



S.B. NO. 2482

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.

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