

ACT 220

S.B. NO. 2737

A Bill for an Act Relating to Disaster Relief.

*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 to ensure that all civil defense functions of the State are coordinated to the maximum extent possible with comparable functions of the federal government, including its various departments and agencies, coordinated with those of other states, localities, and private agencies of every type so that the most effective preparation and use may be made of all personnel, resources, and facilities to deal with any disaster or emergency that may occur. The legislature finds that there is a need to clarify the protections afforded to private agencies and entities engaged in civil defense functions.

Private agencies and entities have always played an integral role in the preparedness of the State. After the tragic attacks upon the United States on September 11, 2001, the nation has been warned to expect the continuation of the war on terrorism and an increased risk of further terrorist attacks upon the United States and around the world. In addition to ongoing preparations and activities relating to natural and man-made disasters and emergencies, the State, counties, federal agencies, military, and private agencies and entities have been coordinating preparations for protection and response, and the development of standard terrorist threat protection conditions and procedures to be used by all participants, in preparing for and responding to potential or actual terrorist threats or attacks.

Pursuant to section 128-6(6), Hawaii Revised Statutes, persons owning, controlling, or operating a public utility or vital facility have been directed to protect and safeguard their property in accordance with established terrorist threat protec-

tion conditions and procedures. In addition to such owners, controllers, or operators, there are other private agencies or entities that are key participants in the civil defense system to ensure that the State is prepared for any type of disaster or emergency.

Currently, the State, counties, and persons engaged in civil defense functions are not liable for death, personal injury, or property damage. However, the law needs to be clarified with respect to the protections afforded to private agencies or entities that are engaged in a civil defense function.

The purpose of this Act is to clarify that the immunities provided under section 128-18, Hawaii Revised Statutes, also apply to private agencies and entities participating in the civil defense system of the State when they are engaged in a civil defense function.

The legislature also finds that there is a need to clarify the law regarding the liability of an innkeeper or hotelkeeper when an innkeeper or hotelkeeper permits the use of property for sheltering persons during disasters and emergencies. The legislature recognizes that there is a shortage of shelter space in Hawaii and that the hotel and visitor industry should be encouraged to assist in the sheltering of visitors to the State during disasters and emergencies.

Under current law, it is unclear whether an innkeeper or hotelkeeper is able to comply fully with the requirements of section 128-19, Hawaii Revised Statutes, when providing shelter to registered guests, because section 128-19 requires that shelter be made available without compensation. This Act also clarifies that compensation received by an innkeeper or hotelkeeper from registered guests is not considered compensation for purposes of section 128-19, Hawaii Revised Statutes.

Finally, this Act also extends immunity for civil and criminal liability to the military and national guard.

SECTION 2. Section 128-18, Hawaii Revised Statutes, is amended to read as follows:

**“§128-18 Immunities; rights. (a) Neither [the]:**

(1) The State [nor any];

(2) Any political subdivision of the State; [nor, except]

(3) Any public utility or vital facility;

(4) Private agencies or entities; nor

(5) Except in cases of wilful misconduct, [the] persons engaged in civil defense functions pursuant to this chapter (including volunteers whose services are accepted by any authorized person),

shall be civilly liable for the death of or injury to persons, or [for] property damage [to property], as a result of any act or omission in the course of the employment or duties~~[, and no]~~ under this chapter.

(b) No act or omission shall be imputed to the owner of any vehicle by reason of the owner's ownership thereof; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section 41D-8 to the extent of the insurance, and unless specifically provided, insurance effected under section 41D-8 shall not include coverage of such risk during a civil defense emergency period. The governor may insure vehicles owned by the State or in the custody and use of the civil defense agency, but insurance effected under section 41D-8 on vehicles used for purposes other than civil defense need not necessarily include coverage of the insured vehicle against the risk incurred or which would be incurred under this chapter as a result of the use of the insured vehicle for civil defense.

(c) Members of the United States army, air force, navy, marines, or coast guard on any duty or service done under or in pursuance of an order or call of the

President of the United States or any proper authority, and the national guard from any other state ordered into service by any proper authority, to assist civil authorities engaged in civil defense functions pursuant to this chapter shall not be liable, civilly or criminally, for any act done or caused by them in pursuance of duty in such service.’’

SECTION 3. Section 128-19, Hawaii Revised Statutes, is amended to read as follows:

“**§128-19 Immunity from liability of private shelter.** Any individual, partnership, firm, society, unincorporated association, joint [adventure] 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.’’

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 28, 2002.)