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## A BILL FOR AN ACT

RELATING TO REGISTERED COVERED OFFENDERS.

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

1           SECTION 1. The legislature finds that sex offender and  
2 other types of transitional group homes are currently being  
3 established in residential areas. Persons suffering from  
4 alcohol and drug addiction are treated as disabled persons  
5 entitled to protection under the federal Fair Housing Act.  
6 Cities and counties have encountered difficulty in applying the  
7 Fair Housing Act because of the decision by the United States  
8 Supreme Court in *City of Edmonds v. Oxford House, Inc.*, 514 U.S.  
9 725 (1995), and other related decisions. In *City of Edmonds*,  
10 the Court held that a numerical limit on the number of unrelated  
11 adults in a single family dwelling violates the Fair Housing Act  
12 as it relates to disabled individuals.

13           Group homes have been established in family neighborhoods  
14 under the rationale that drug and alcohol addiction is a  
15 disabling condition that qualifies drug and alcohol addicted  
16 residents for protection under the Fair Housing Act. This  
17 rationale has then been used as a basis to extend protection to  
18 sex offenders or other felons who may or may not be under the



1 supervision of the jurisdiction's corrections agency. According  
2 to the United States Department of Justice, Civil Rights  
3 Division, persons convicted for illegal manufacture or  
4 distribution of a controlled substance, sex offenders, and  
5 juvenile offenders are not considered disabled under the Fair  
6 Housing Act, by virtue of that status.

7 This Act addresses only the issue of registered adult sex  
8 offenders. In particular, this Act:

- 9 (1) Sets a limit of two registered adult sex offenders in  
10 a residential dwelling unit;
- 11 (2) Provides for a judicial bypass to exceed that limit in  
12 limited circumstances;
- 13 (3) Authorizes counties to exceed the limit by ordinance  
14 to allow and regulate group residence homes for sex  
15 offenders; and
- 16 (4) Grandfathers current residence situations, while  
17 requiring compliance with county ordinances when  
18 established.

19 The purpose of this Act is to balance the need for housing  
20 for registered adult sex offenders and the concerns of citizens  
21 that arise from sex offender group homes being established in  
22 residential neighborhoods.



1 SECTION 2. Chapter 846E, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§846E- Adult covered offenders; prohibited group  
5 dwelling; exceptions. (a) Except as otherwise provided in this  
6 section, when a covered offender is required to be registered  
7 under this chapter, that person may not reside in any  
8 residential dwelling unit with more than one other covered  
9 offender who is also required to register pursuant to this  
10 chapter. If, on the effective date of this section, any covered  
11 offender required to be registered under this chapter is legally  
12 residing in a residential dwelling unit with more than one other  
13 covered offender required to so register, the person may  
14 continue to reside in that residential dwelling unit without  
15 violating this section, provided that no additional covered  
16 offenders required to be registered shall move into that  
17 residential dwelling unit if the covered offender moving in  
18 would be in violation of this section.

19 (b) For purposes of this section:

20 (1) "Reside" or "residing" means occupying the residential  
21 dwelling unit as a fixed place of abode or habitation  
22 for any period and to which place the person has the



1 intention of returning after a departure or absence  
2 therefrom regardless of the duration of absence;

3 (2) "Residential dwelling unit" includes but is not  
4 limited to single-family dwellings and units in  
5 multifamily dwellings, including units in duplexes,  
6 apartment dwellings, mobile homes, condominiums, and  
7 townhouses in areas zoned as residential;

8 (c) A judge of the district court, upon petition and after  
9 an appropriate hearing, may authorize a covered offender  
10 required to be registered under this chapter to reside in a  
11 residential dwelling unit with more than one other covered  
12 offender who is also required to be registered under this  
13 chapter, if the judge determines upon clear and convincing  
14 evidence that:

15 (1) Not doing so would deprive the petitioner of a  
16 constitutionally guaranteed right; and

17 (2) The right is more compelling under the facts of the  
18 case than is the interest of the state and county  
19 governments in protecting neighboring citizens,  
20 including minors, from risk of physical or  
21 psychological harm. The risk of harm shall be  
22 presumed, absent clear and convincing evidence to the



1           contrary, given the petitioner's status as a covered  
2           offender required to be registered under this chapter.

3           Any exception allowed under this subsection shall be  
4           limited to alleviate only a deprivation of constitutional right  
5           that is more compelling than the interest of the state and  
6           county governments in minimizing the risk of harm to the  
7           neighboring citizens. Any order of exception under this  
8           subsection shall be made a part of the registry maintained  
9           pursuant to this chapter.

10           (d) Any county may establish standards for the operation  
11           of residential dwelling units for registered covered offenders  
12           that exceed the number of registered covered offenders allowed  
13           to reside in a residential dwelling unit under subsection (a).  
14           Applicable standards shall include procedures to allow comment  
15           by neighboring residents within a specified distance and may  
16           include but are not limited to:

17           (1) Designating permissible zones in which the dwelling  
18           units may be located;

19           (2) Designating permissible distances between the dwelling  
20           units;

21           (3) Designating the maximum number of registered covered  
22           offenders allowed to reside in the dwelling units;



- 1        (4) Designating qualifications and standards for  
2        supervision and care of the dwelling units and the  
3        residents;
- 4        (5) Designating requirements and procedures to qualify as  
5        the operator of the dwelling units, including any  
6        requirement that the residents be engaged in treatment  
7        or support programs for registered covered offenders  
8        and related addiction treatment or support programs;  
9        and
- 10       (6) Designating any health and safety requirements that  
11       are different than those applicable to other  
12       residential dwelling units in the zone.
- 13       (e) No person or entity shall operate a residential  
14       dwelling unit for registered covered offenders in violation of  
15       the limitations of subsection (a), except as otherwise provided  
16       under subsection (d). If, on the effective date of this  
17       section, any individual or entity is operating an existing  
18       residential dwelling unit for covered offenders required to be  
19       registered under this chapter, and when such individual or  
20       entity also requires such persons to be participants in a sex  
21       offender treatment or support program, the individual or entity



1 shall not be precluded from continuing to operate the  
2 residential dwelling unit; provided that:

3 (1) The residential dwelling unit shall not operate at a  
4 capacity exceeding eight residents in the dwelling  
5 unit and two residents per bedroom, or the existing  
6 number of residents, whichever is less;

7 (2) Once the county enacts an ordinance pursuant to  
8 subsection (d) establishing standards for the  
9 operation of residential dwelling units for registered  
10 covered offenders, the operator of the residential  
11 dwelling unit, no later than one year after enactment  
12 of the ordinance, shall comply with all standards of  
13 the ordinance, except any requirement that is less  
14 than the maximum capacity provided for under  
15 paragraph (1) or that requires a relocation of the  
16 residence;

17 (3) The burden of proving that an existing residential  
18 dwelling unit qualifies for continuing operation under  
19 this subsection shall be upon the operator of the  
20 residential dwelling unit; and

21 (4) Any change in the use of an existing residential  
22 dwelling unit shall void the exception for the



1 continuing operation of the dwelling unit under the  
2 provisions of this section.

3 (f) If any covered offender required to be registered  
4 under this chapter is on probation or parole under the  
5 supervision of the court or Hawaii paroling authority,  
6 respectively, the court or the authority shall be notified by  
7 the covered offender or the covered offender's agent of any  
8 intent to reside with another covered offender required to be  
9 registered under this chapter. The court or the authority shall  
10 approve the living arrangement in advance as consistent with the  
11 terms of the probation or parole and consistent with the  
12 objective of reducing the risk of recidivism.

13 (g) Any person who knowingly violates the provisions of  
14 this section shall be guilty of a misdemeanor.

15 (h) Any county shall be entitled to injunctive relief  
16 against any person or entity operating a residential dwelling  
17 unit within its jurisdiction in violation of this section."

18 SECTION 3. New statutory material is underscored.





1 SECTION 4. This Act shall take effect upon its approval.

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**Report Title:**

Registered Covered Offenders; Residential Restrictions

**Description:**

Limits the number of covered offenders required to be registered under chapter 846E, HRS, who may live together. Authorizes the counties to adopt ordinances regulating residences for registered covered offenders.

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

