

# SB 2147

Measure Title: RELATING TO THE REGULATION OF CLEAN AND SOBER HOMES AND HALFWAY HOUSES.

Report Title: Clean and Sober Homes; Halfway Houses; Licensing

Description: Requires the licensing of all clean and sober homes and halfway houses. Requires the Department of Human Services to adopt rules that regulate these dwellings.

Companion:

Package: None

Current Referral: HMS/CPN, WAM

Introducer(s): CHUN OAKLAND (BR)

NEIL ABERCROMBIE  
GOVERNOR



PATRICIA MCMANAMAN  
DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 7, 2012

TO: The Honorable Suzanne Chun Oakland, Chair  
Senate Committee on Human Services  
  
The Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

FROM: Patricia McManaman, Director

SUBJECT: **S.B.2147 - RELATING TO THE REGULATION OF CLEAN AND SOBER HOMES AND HALFWAY HOUSES**

Hearing: Tuesday, February 7, 2012; 1:15 p.m.  
Conference Room 016, State Capitol

**PURPOSE:** The purpose of the bill is to require the licensing of all clean and sober homes and halfway houses and to require the Department of Human Services to adopt rules that regulate these dwellings.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) opposes this bill because it is discriminatory and potentially violates the civil rights of disabled individuals.

Clean and sober homes and halfway houses are residences that provide a safe-environment to help individuals transition to independent living. These residences do not provide therapeutic services. Accordingly, there is no indication to license these residences. It seems discriminatory to require a license for these residences, when no such requirement is imposed upon other homes where people simply reside together.

This bill is not consistent with federal law. The Federal Fair Housing Act prohibits discrimination on the basis of disability, which includes persons with mental or physical impairments, including alcoholism, drug addiction, and mental illness. This law makes it illegal for local governments to deny a permit or license for a home because of the disability of an individual who resides or would reside there.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2147, RELATING TO THE REGULATION OF CLEAN AND SOBER HOMES AND HALFWAY HOUSES.

**BEFORE THE:**

SENATE COMMITTEES ON HUMAN SERVICES AND ON  
COMMERCE AND CONSUMER PROTECTION

**DATE:** Tuesday, February 7, 2012                      **TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Andrea J. Armitage, Deputy Attorney General

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Chairs Chun Oakland and Baker and Members of the Committees:

The Department of the Attorney General has serious concerns with this bill as drafted because it violates the constitutional requirement of having a single subject as its title, it is inconsistent with existing definitions of clean and sober homes and halfway houses, it may violate federal law that prohibits states from discriminating against persons with disabilities when licensing community-based group homes, and it fails to create a special fund in which to deposit the licensing fees.

This bill would amend chapter 346, Hawaii Revised Statutes (HRS), by adding a new section that would require the Department of Human Services (DHS) to license clean and sober homes and halfway houses effective July 1, 2013. The bill defines these facilities consistent with section 46-4(f), HRS. It would require DHS to adopt rules for these facilities. It provides that the operator of these facilities must conduct at least one public informational meeting prior to being licensed, and that DHS must consider the testimony from the hearing(s) when deciding whether to grant the license for the facility. The bill also requires DHS to establish an annual licensing fee, the proceeds of which shall be applied to the administrative costs of the licensing program. This bill further requires that after June 30, 2013, no state agency shall place a client in an unlicensed clean and sober home or halfway house.

The current laws regulating clean and sober homes and halfway houses exist in section 46-4, HRS. Section 46-4(f) defines these facilities as follows:

"Clean and sober home" means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:

- (1) Are recovering from substance abuse;
- (2) Share household expenses; and
- (3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises;

provided that the home shall meet all applicable laws, codes, and rules of the counties and State.

"Halfway house" means a group living facility for people who:

- (1) Have been released or are under supervised release from a correctional facility;
  - (2) Have been released from a mental health treatment facility; or
  - (3) Are receiving substance abuse or sex offender treatment; and
- are housed to participate in programs that help them readjust to living in the community.

Clean and sober homes and halfway houses thus serve different types of residents and are structured differently. Therefore, the title encompasses two different subjects, in conflict with article III, section 14, of the Hawaii State Constitution, which requires: "Each law shall embrace but one subject, which shall be expressed in its title." The way to rectify this constitutional defect would be to find an active bill that has an appropriate title into which to transfer the content of this bill, such as "Relating to Group Homes."

If the title defect is remedied, we have the following remaining concerns about the substance of the bill. Subsection (c) of the new section being added to chapter 346 requires DHS to adopt rules under which to regulate clean and sober homes and halfway houses. However, proposed subsection (c)(3) could cause confusion because it requires DHS to have rules that describe programs to provide care and rehabilitation for the residents, when neither the definition of clean and sober homes or halfway houses requires that either facility provide care for their residents, nor must they provide in-house programming. The purpose of clean and sober homes is "to provide a stable environment of clean and sober living conditions to sustain recovery," and similarly, the purpose of halfway houses is to allow residents "to participate in programs that help them readjust to living in the community." Any rules with respect to care of residents would be inconsistent with the statutory requirements for these facilities. And although programming may be included in the definition of halfway houses, it is not entirely clear if this

refers to in-house programs. Thus, the requirement for programming may conflict with the section 46-4 definitions of the facilities. Additionally, subsection (c) (3) states that DHS must adopt rules to require these facilities to provide a program “for persons who require structured living and who are **suffering** or recovering from substance abuse . . . .” Although a halfway house can house persons who are participating in substance abuse treatment, neither facility provides housing for those who are actively using illegal drugs, which is what “suffering” from substance abuse implies. This paragraph thus conflicts with current law. We recommend that it be deleted or revised to mirror the definitions of clean and sober homes and halfway houses in section 46-4, HRS.

There are other terms in subsection (c) that would be best to define. Subsection (c)(5) provides that the rules must “identify best practices for communicating with the surrounding community” but it is unclear what “communicating” means in this context. Subsection (c)(6) requires rules to “ensure” the safety and welfare of the staff and residents of the facilities as well as their neighbors. This should be clarified as no plan can “ensure” the safety and welfare of others; we recommend that “address” would be a better word. Also, proposed subsection (h) appears to require all state agencies to place all of their clients in licensed clean and sober homes and halfway houses. We would recommend that it be rewritten to provide: “After June 30, 2013, state agencies . . . shall refer appropriate clients only to licensed clean and sober homes and halfway houses” if that is what is intended.

Subsection (d) of the new section being added to chapter 346 requires a public meeting prior to licensing one of these facilities. However, section 46-4(e), HRS, already requires a public hearing before a permit may be issued for either type of facility. It provides:

No permit shall be issued by a county agency for the operation of a halfway house, a clean and sober home, or a drug rehabilitation home unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.

A clean and sober home shall be considered a residential use of property and shall be a permitted or conditional use in residentially designated zones, including but not limited to zones for single-family dwellings.

The public hearing requirement in this bill is redundant. Furthermore, the fact that it requires DHS to “consider the testimony received at the informational meeting in determining whether to

grant a license for the operation of a clean and sober home or halfway house” may violate the federal Fair Housing Amendments Act of 1988 (FHAA), codified in 42 U.S.C. sections 3601 to 3631, which prohibits governments from considering the feelings of neighbors with respect to the type of disabilities the residents of a facility might have prior to granting a permit or license to the facility.

The FHAA prohibits discrimination against persons with any disability. The term is defined broadly to mean any person who has “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment . . .” 42 U.S.C. § 3602(h). The FHAA’s purposes include ending segregation of the housing available to people with disabilities and giving people with disabilities the right to choose where they wish to live.

Both the United States Department of Justice (DOJ) and the United States Department of Housing and Urban Development (HUD) have determined that the FHAA applies to state and local zoning and licensing laws, and both departments take an active role in enforcing the FHAA. Because of the significant amount of litigation in this area over the years and across the country, the federal government issued a “Joint Statement of the Department of Justice and the Department of Housing and Urban Development: Group Homes, Local Land Use, and the Fair Housing Act.” It is very informative and can be found in its entirety at:

[http://www.usdoj.gov/crt/housing/final8\\_1.htm](http://www.usdoj.gov/crt/housing/final8_1.htm)

The Statement describes what the FHAA means by “disability.” It provides:

Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, **alcoholism, drug addiction**, chronic fatigue, learning disability, head injury, and **mental illness**. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. [Emphases added.]

Therefore, it is reasonable to interpret the FHAA to apply to residents of clean and sober homes and halfway houses.

The Statement addresses whether local governments may consider the concerns of community members in making a decision whether to grant a permit. This analysis can be interpreted similarly with respect to state licensing of clean and sober homes and halfway houses. It provides:

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?**

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

As a result of this clear federal guidance, we recommend that the last sentence of proposed paragraph (d) be removed from the bill, allowing the simpler provisions of section 46-4, HRS, to control, in order to prevent the risk of a FHAA violation.

We have other substantive concerns with the bill. Subsection (e) of the new section that the bill would add, regarding the licensing fees to be applied to the administrative costs of the licensing program, cannot be implemented unless a special fund is established by statute for this purpose. The statute must state what may go into the special fund and what the funds may be used for. Subsection (i) of the new section should state that all existing facilities have one year from the effective date of the administrative rules, rather than the effective date of the bill, since the licensing requirements and fees will be explained in the rules. Additionally, facilities will need some time to come into compliance with a new licensing scheme. There also needs to be a provision for the implementation of licensing clean and sober homes and halfway houses that already exist. Finally, subsection (j) of the new section that the bill would add is redundant since proposed subsection (c) discusses the requirement for the implementation of rules in detail.

For the foregoing reasons, we respectfully ask the Committees to hold this bill or to make the amendments suggested above.







HAWAII SUBSTANCE ABUSE COALITION

*SB 2147 RELATING TO THE REGULATION OF CLEAN AND SOBER HOMES AND HALFWAY HOUSES. Requires the licensing of all clean and sober homes and halfway houses. Requires the Department of Human Services to adopt rules that regulate these dwellings.*

**SENATE COMMITTEE ON HUMAN SERVICES**

Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair

**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, Vice Chair

February 7, 2012, 1:15 p.m.  
Conference Room 016

**HAWAII SUBSTANCE ABUSE COALITION (HSAC) Strongly Supports SB 2147:**

GOOD MORNING CHAIRS CHUN OAKLAND, BAKER, VICE CHAIRS IHARA, TANIGUCHI, AND DISTINGUISHED COMMITTEE MEMBERS:

**SUMMARY**

The vast majority of clean and sober homes are independent owners who have a landlord-tenant relationship. Some of the owners/lessors violate their county land use permits by overcrowding, which results in noise and parking complaints from neighbors. Despite house rules, the tenants generally govern themselves such that the housing is considered independent living – that is; there is no program that could involve state oversight. Since alcoholism and past illicit drug use are considered disabilities, they are subject to protection laws under the Federal Fair Housing, the Rehabilitation Act and the Americans with Disabilities Act. A task force would consider how to ensure compliance to regulations without using restrictions that are discriminatory.

**Community Problems**

The problem to the community is that because clean and sober houses are generally independent living and operated by a democratic process by the residents, some homes are not always well regulated with respect to traffic, parking and noise.

It's a problem to accredited healthcare providers too because they are required to obtain a license to operate "managed" therapeutic living homes but neighborhoods are reluctant to approve them given their negative experience with unpopular clean and sober houses.

Compounding the issue is that independent living for those with disabilities are protected by Federal law. Many communities throughout the nation have been frustrated with lack of accountability and have enacted regulations only to see them struck down in court. In 2002, for example, Florida passed an ordinance that enacted regulations on sober houses prompting the ACLU to sue for discrimination, which resulted in payments for more than \$600,000 to sober-house operators.<sup>1</sup>

While clean and sober houses have been around in Hawaii for several decades, there is a surge of many new rentals because 1) treatment agencies are encouraging self-help/supportive living; 2) there are a growing number – in the thousands - of recovering individuals now reentering communities each year; and 3) landlords are assured of long term tenancy and profitability.

Recent surveys from several states indicate that the clear majority of people are in favor of clean and sober houses. Further, the well-run clean and sober housing organizations, such as Oxford House, are considered good neighbors after they are established for at least a year.<sup>2</sup> As more and more recovering individuals seek independent living in a supportive environment as a means to transition to drug-free living, we can expect many more sober living housing in the very near future.

While many sober houses are well-run, the poorly-run have a greater impact to the community, often resulting in NIMBY (Not In My Back Yard) issues to problem-free clean and sober housing.

### **Recommendation:**

We suggest starting where some other states are starting. We propose a Task Force to consider the following:

- First, let's define independent living within the context of clean and sober housing in order to determine which models fall under protection.
- Second, let's get legal reviews about the liability issues of subjecting clean and sober houses to public informational meetings, neighborhood board approvals, public agency oversight, and licensure that may be considered discriminatory acts to people with disabilities.
- Finally, let's evaluate what is legal to regulate and ensure that such regulation is applicable to all groups of community living including the general public.

### **Conclusion:**

A clean and sober house that is self-run, self-supported, disciplined practice of rules and regulations helps to bring hope to those in recovery who have suffered from addiction. Well run self-help housing is a positive contribution to community. Poorly-run self-help housing creates negative community relations. It's important to enact regulations that

would not be challenged and possibly lost in court. The task force could evaluate the problem from a community, legal, healthcare and disability perspective.

We appreciate the opportunity to testify and are available for testimony.

**References:**

- 1) Matt Snyders, *Sobriety Check: Neighbors turn to St. Paul City Council to provide more oversight on sober homes*, Minneapolis News, October 08, 2007
- 2) Journal of Prevention & Intervention in the Community (The Hayworth Press), *This Is My Neighborhood: Comparing United States and Australian Oxford House Neighborhoods* Vol. 31, No. 1/2, 2006, pp 41-49

# Hope, Help and Healing Kaua'i

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## TESTIMONY OPPOSING BILL SB No. 2147 REGARDING REGULATION OF CLEAN & SOBER OR HALFWAY HOUSES

DATE:	Tuesday, February 07, 2012
TIME:	1:15 pm
PLACE:	Conference Room 016 State Capitol 415 South Beretania Street

Dear Senator Suzanne Chun,  
Senator Les Ihara, Jr.,  
Senator Rosalyn Baker,  
Senator Brian Taniguchi,

On behalf of Hope, Help and Healing Kaua'i we would like to submit testimony as to why we are against bill S.B. No. 2147 relating to regulation of clean and sober homes and halfway houses.

Item (a); states the proposal is to "to ensure the health, safety, and welfare of the individuals therein and of the neighbors in close proximity" however how would the Department of Human Services ensure the safety of the clients in clean and sober homes from the neighbors not in recovery and living in close proximity to clean & sober home?

HHHK's six years of experience as a drug and alcohol treatment facility is that the "NIMBY" (not in my back yard) mentality is halting forward progress in providing the care needed to adequately treat individuals suffering from moderate to severe forms of drug and alcohol addiction. Funds could be better spent allowing for education in the community.

More importantly is the impact more regulatory services and mandating certification will do to the providers of transitional or halfway homes. For example, Kaua'i has no therapeutic or residential facilities currently in operation 1) due to the "NIMBY" problems on Kaua'i with such a small island everyone knows each other and their previous drug use or the reasons for incarceration. Mandating that "we" as the provider hold a public forum is creating a dramatic picture of many drug users moving into the neighborhood when in reality these individuals are mandated to be in these residences by a correctional facility, drug tested and/or on parole or work furlough. If they are not recommended from a facility and IF they are a self referral they are generally ready, able and willing to comply with any rules our organization mandates. *THESE CLIENTS ARE CLEAN AND SOBER AND DO NOT USE DRUGS AND/OR*

**ALCOHOL 2) the prohibitively high cost of housing& utilities; The State of Hawaii Consolidated Plan states that:**

**"The Fair Market Rent (FMR) in the State of Hawaii for a two-bedroom apartment is \$1,536. In order to afford this level of rent and utilities, without paying more than 30 percent of income on housing, a household must earn \$5,119 monthly or \$61,428 annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into a Housing wage of \$29.53".<sup>1</sup>**

**In most cases 3) our clients consist of previously incarcerated and/or homeless clients, under the 30% income levels with little or no family support. Upon entry to our program they understand that this is the best chance they have to redeem their lives, to build a support system and to avoid relapse and recidivism. Where will they go if HHHK cannot afford to provide clean & sober housing because of additional work and/or staffing required for complying with regulations? Continual exile will most definitely result in relapse and a drug addict without supervision and support is considerably more dangerous than a person in recovery asking for help.**

**Further regulations will not deter criminal activity in a household or clean & sober residence in fact the staffing dollars required to obtain the certification will deter the provider from offering those services at all resulting in a loss of already over burdened social resources.**

**In six years of operation HHHK has never had one violent crime, no incidence of intoxication on the premises, and no safety concerns brought to our attention by neighbors. In fact, many times our residents have been a part of community service with neighbors. Police & Public Safety Departments can intervene if there is criminal activity in the residences, further regulation will not stop this activity. Do not punish reputable organizations for those organizations who do not comply with the standards in place.**

**Please oppose bill 2147 as a manner of humanity and respect for individuals who are trying to obtain a better quality of life. Please oppose bill 2147 for the clean & sober housing providers who already carry the financial burden of supplying these resources for the benefit of our community and who need support rather than further regulation of projects that create "nimby" mind sets. Please oppose any bill that sets back progress for helping individuals in need.**

**Please feel free to contact me further if you feel you need additional information.**

**Respectfully,**



**Tina Albao  
Community Development Coordinator  
Hope, Help and Healing Kaua'i  
[tina.albao@hawaiiantel.net](mailto:tina.albao@hawaiiantel.net)  
808-482-1065**

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<sup>1</sup>State of Hawaii Consolidated Plan 2010-2014, Page 36



## **HAWAII DISABILITY RIGHTS CENTER**

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### **THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012**

**Committee on Human Services  
Committee on Commerce and Consumer Protection  
Testimony in Opposition To S.B.2147  
Relating to The Regulation of Clean and Sober Homes and Halfway Houses**

**Tuesday, February 7, 2012, 1:15 P.M.  
Conference Room 016**

Chair Chun-Oakland, Chair Baker and Members of the Committees:

I am Louis Erteschik, Acting Executive Director at the Hawaii Disability Rights Center, and am testifying in opposition to this bill.

In various forms, this issue has been considered for the past several sessions at the legislature. We had been under the impression that there was some consensus that there was sufficient interest in forming a Task Force to look at the issues surrounding these homes. We still feel that would be a sounder approach. We are not unsympathetic to communities that have concerns regarding various homes. However, if we are to achieve the capacity to care for individuals in the community, then it is essential that we have the ability to find and site suitable residential settings. Additionally, the Olmstead decision of the US Supreme Court mandates that individuals with disabilities be able to reside in community based, integrated settings.

As to some specific provisions in the bill, we have particular opposition. There is no reason to require that clean and sober homes be licensed. Under the current regulatory scheme, a license would be required if any form of treatment or therapy were carried on at the home. These are simply places to live for certain individuals and nothing further. For that reason, there is no basis upon which to require a license. It seems discriminatory to require a license for these individuals, when no such requirement is imposed upon other homes where people simply reside together.



The most concerning provision in the bill is on page 3 where it states that comments from neighbors are to be considered in the granting or denial of a license. This completely violates the Federal Fair Housing Act as it sets up a different standard for the ability of individuals with disabilities to reside in the community. They have the same right to reside in the same areas as any other individual and any provision which would give any form of veto power or even required "consideration" of the views of neighbors would be blatantly illegal.

Thank you for the opportunity to testify in opposition to this measure.



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 27, 2012 9:38 PM  
**To:** HMS Testimony  
**Cc:** prentissc001@hawaii.rr.com  
**Subject:** Testimony for SB2147 on 2/7/2012 1:15:00 PM

Testimony for HMS/CPN 2/7/2012 1:15:00 PM SB2147

Conference room: 016  
Testifier position: Support  
Testifier will be present: No  
Submitted by: *CHUCK Prentiss*  
Organization: *Kailua Neighborhood Board*  
E-mail: [prentissc001@hawaii.rr.com](mailto:prentissc001@hawaii.rr.com)  
Submitted on: 1/27/2012

**Comments:**

The Kailua Neighborhood Board has been on record for some time recommending regulation of clean & sober homes, and halfway houses. This Bill SB2147 provides for both State regulation and conformance with county regulations which is the correct way to provide a solution to this serious problem in our communities.