

JAN 17 2014

A BILL FOR AN ACT

RELATING TO GROUP HOMES.

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

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PART I

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SECTION 1. The legislature finds that clean and sober

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homes and halfway houses, which are located in communities

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throughout the State, provide housing for those suffering from

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substance abuse, including those who may have mental health

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issues, as they transition from the treatment setting to life in

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the community. Clean and sober homes and halfway houses provide

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a means for a person to return to the community through support

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in an alcohol- and drug-free, home-like environment, without the

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rigid structure of a therapeutic living program which requires

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licensure. The support of a home environment fulfills a need

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for those who are reintegrating into the community while

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maintaining sobriety. Notwithstanding the needs of those who

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benefit from these homes, neighboring residents have expressed

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concerns over the location and legality of the operation of such

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homes in their immediate vicinity, and the lack of neighborly

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behavior of some residents. While the State's only halfway

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house is monitored by the agencies that contract for its



1 services, the level of oversight for clean and sober homes
2 varies, depending on the referral source.

3 The legislature additionally finds that various types of
4 group homes are defined in section 46-4(f), Hawaii Revised
5 Statutes, relating to county zoning. Section 46-4(f), Hawaii
6 Revised Statutes, includes definitions for terms that are either
7 not used or are defined in other parts of the Hawaii Revised
8 Statutes. In addition, in violation of the federal Fair Housing
9 Amendments Act, section 46-4(e), Hawaii Revised Statutes,
10 requires that a public informational meeting be held before a
11 halfway house, clean and sober home, or a drug rehabilitation
12 home is located in a community.

13 In response to legislation introduced in 2012, the director
14 of health convened a clean and sober homes and halfway houses
15 task force to develop a plan to ensure that these homes are
16 properly monitored and accountable for meeting occupancy, zoning
17 and permitting requirements, and quality standards. This Act
18 implements the recommendations of the task force, balancing the
19 needs of those requiring the support of the group homes and the
20 concerns of community members.

21 Accordingly, the purpose of this Act is to provide
22 individuals with access to an alcohol- and drug-free, home-like



1 living environment in residences that are in compliance with
2 county, state, and federal requirements and minimum quality
3 standards by:

- 4 (1) Establishing a registry for clean and sober homes
5 within the department of health;
- 6 (2) Aligning functions of state and county jurisdictions
7 and ensuring compliance with federal law; and
- 8 (3) Excluding clean and sober homes from the residential
9 landlord-tenant code.

10 **PART II**

11 SECTION 2. The legislature finds that the primary goals of
12 rehabilitation and recovery are to restore social, family,
13 lifestyle, vocational, and economic support by stabilizing an
14 individual's physical and psychological functioning. Alcohol-
15 and drug-free environments that are safe, sanitary, and secure
16 promote recovery and assist individuals in becoming
17 self-supporting. These environments prepare a person who is
18 recovering from substance abuse to transition into the community
19 at-large.

20 The legislature further finds that the clean and sober
21 homes and halfway houses task force members recognize that there
22 is a need to improve the operation of group homes. While some



1 homes are well-run, others are overcrowded and not well managed.
 2 To increase the number of homes that maintain appropriate living
 3 conditions, a voluntary registry shall be established to set
 4 minimum standards, provide special advantages to homes on the
 5 registry, including technical support and preferred referral
 6 status. The voluntary registry will include criteria by which
 7 the meeting of standards will be assessed, and provide a
 8 framework for the monitoring of homes. A key function of the
 9 voluntary registry is to enable agencies to monitor the
 10 residences that provide the necessary recovery support to their
 11 referred clients.

12 The purpose of this part is to establish a voluntary
 13 registry of clean and sober homes that will provide a framework
 14 for monitoring the homes.

15 SECTION 3. Chapter 321, Hawaii Revised Statutes, is
 16 amended by adding a new section to part XVI to be appropriately
 17 designated and to read as follows:

18 "§321- Clean and sober homes registry. (a) The
 19 department shall establish a voluntary clean and sober homes
 20 registry to provide persons in substance abuse recovery with a
 21 clean, safe, sober, and supportive environment. The department
 22 shall establish the procedures and standards that homes shall

1 comply with in order to be registered, including but not limited
2 to:

- 3 (1) Organizational and administrative standards;
- 4 (2) Fiscal management standards;
- 5 (3) Operation standards;
- 6 (4) Recovery support standards;
- 7 (5) Property standards; and
- 8 (6) Good neighbor standards.

9 (b) Upon review and approval of a home operator's
10 application, the department shall issue a certificate of
11 registration that shall specify:

- 12 (1) The name of the holder of the registration;
- 13 (2) The address of the home to which the registration
14 applies;
- 15 (3) The maximum number of individuals to reside in the
16 home; and
- 17 (4) The period for which the registration shall be valid.

18 An owner, operator, or landlord shall not represent or
19 advertise the property as a "registered clean and sober home"
20 unless the home is registered and remains in good standing.

21 (c) The certificate of registration shall be publicly
22 displayed at the home.



1 (d) The certificate of registration shall be
2 non-transferable to a new owner or operator, or to an address
3 other than as specified on the certificate of registration.

4 (e) Nothing in this section shall relieve a certificate
5 holder from compliance with other pertinent statutory
6 provisions, nor shall a certificate holder be relieved from
7 compliance with other applicable provisions of federal, state,
8 or county laws, ordinances, or rules; provided that clean and
9 sober homes shall be excluded from chapter 521, the residential
10 landlord-tenant code.

11 (f) The director may revoke the certificate of
12 registration if a home ceases to meet established standards or
13 does not comply with the provisions of any other applicable
14 federal, state, or county law, ordinance, or rule.

15 (g) The director may immediately revoke a certificate of
16 registration if there are reasonable grounds to believe that the
17 continued operation of the home presents an immediate danger to
18 residents of the home or the general public. The revocation
19 shall be made in writing to the certificate holder.

20 (h) The department shall maintain an online listing of all
21 registered clean and sober homes.



1 (i) The department shall establish a toll-free telephone
2 line to receive and respond to complaints regarding clean and
3 sober homes.

4 (j) This section shall not be construed to abrogate an
5 individual's right to privacy. Unless otherwise provided by
6 law, the department shall implement sufficient protections to
7 ensure that the identity of a clean and sober home resident
8 remains confidential and that information collected pursuant to
9 this section is used solely for the purpose of this section.

10 (k) The director shall adopt rules pursuant to chapter 91
11 as are appropriate to carry out the purposes of this section and
12 its efficient administration."

13 SECTION 4. Section 321-191, Hawaii Revised Statutes, is
14 amended by adding two new definitions to be appropriately
15 inserted and to read as follows:

16 "Clean and sober home" means a dwelling unit that is
17 intended to provide a stable, independent environment of
18 alcohol- and drug-free living conditions to sustain recovery and
19 that is shared by unrelated adult persons who are attempting to
20 maintain a life of sobriety.

21 "Director" means the director of health."



1 SECTION 5. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2014-2015 to
4 plan, establish, staff, and operate the registry of clean and
5 sober homes.

6 The sum appropriated shall be expended by the department of
7 health for the purposes of this part.

8 SECTION 6. The department of health shall submit a
9 progress report to the legislature concerning the status of the
10 plan for establishing and operating the registry of clean and
11 sober homes, no later than twenty days prior to the convening of
12 the 2015 regular session.

13 **PART III**

14 SECTION 7. The legislature finds that amendments to
15 section 46-4, Hawaii Revised Statutes, relating to county
16 zoning, that were agreed upon at the conclusion of deliberations
17 by the clean and sober homes and halfway houses task force in
18 December 2012, are necessary to better align functions of state
19 and county jurisdictions.

20 The purpose of this part is to clarify the conditions under
21 which the counties shall not prohibit group homes that have up
22 to eight unrelated persons in a dwelling unit; ensure compliance



1 with the federal Fair Housing Amendments Act by repealing the
2 requirement for a public informational meeting; and eliminate
3 definitions for terms that are defined elsewhere in the Hawaii
4 Revised Statutes, are not used, or will be codified elsewhere in
5 the Hawaii Revised Statutes.

6 SECTION 8. Section 46-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§46-4 County zoning.** (a) This section and any
9 ordinance, rule, or regulation adopted in accordance with this
10 section shall apply to lands not contained within the forest
11 reserve boundaries as established on January 31, 1957, or as
12 subsequently amended.

13 Zoning in all counties shall be accomplished within the
14 framework of a long-range, comprehensive general plan prepared
15 or being prepared to guide the overall future development of the
16 county. Zoning shall be one of the tools available to the
17 county to put the general plan into effect in an orderly manner.
18 Zoning in the counties of Hawaii, Maui, and Kauai means the
19 establishment of districts of such number, shape, and area, and
20 the adoption of regulations for each district to carry out the
21 purposes of this section. In establishing or regulating the
22 districts, full consideration shall be given to all available



1 data as to soil classification and physical use capabilities of
2 the land to allow and encourage the most beneficial use of the
3 land consonant with good zoning practices. The zoning power
4 granted herein shall be exercised by ordinance which may relate
5 to:

- 6 (1) The areas within which agriculture, forestry,
7 industry, trade, and business may be conducted;
- 8 (2) The areas in which residential uses may be regulated
9 or prohibited;
- 10 (3) The areas bordering natural watercourses, channels,
11 and streams, in which trades or industries, filling or
12 dumping, erection of structures, and the location of
13 buildings may be prohibited or restricted;
- 14 (4) The areas in which particular uses may be subjected to
15 special restrictions;
- 16 (5) The location of buildings and structures designed for
17 specific uses and designation of uses for which
18 buildings and structures may not be used or altered;
- 19 (6) The location, height, bulk, number of stories, and
20 size of buildings and other structures;
- 21 (7) The location of roads, schools, and recreation areas;
- 22 (8) Building setback lines and future street lines;



- 1 (9) The density and distribution of population;
- 2 (10) The percentage of a lot that may be occupied, size of
- 3 yards, courts, and other open spaces;
- 4 (11) Minimum and maximum lot sizes; and
- 5 (12) Other regulations the boards or city council find
- 6 necessary and proper to permit and encourage the
- 7 orderly development of land resources within their
- 8 jurisdictions.

9 The council of any county shall prescribe rules,
10 regulations, and administrative procedures and provide personnel
11 it finds necessary to enforce this section and any ordinance
12 enacted in accordance with this section. The ordinances may be
13 enforced by appropriate fines and penalties, civil or criminal,
14 or by court order at the suit of the county or the owner or
15 owners of real estate directly affected by the ordinances.

16 Any civil fine or penalty provided by ordinance under this
17 section may be imposed by the district court, or by the zoning
18 agency after an opportunity for a hearing pursuant to chapter
19 91. The proceeding shall not be a prerequisite for any
20 injunctive relief ordered by the circuit court.

21 Nothing in this section shall invalidate any zoning
22 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,
2 1957.

3 The powers granted herein shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.
8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) and (d).

12 Neither this section nor any ordinance enacted pursuant to
13 this section shall prohibit the continued lawful use of any
14 building or premises for any trade, industrial, residential,
15 agricultural, or other purpose for which the building or
16 premises is used at the time this section or the ordinance takes
17 effect; provided that a zoning ordinance may provide for
18 elimination of nonconforming uses as the uses are discontinued,
19 or for the amortization or phasing out of nonconforming uses or
20 signs over a reasonable period of time in commercial,
21 industrial, resort, and apartment zoned areas only. In no event
22 shall such amortization or phasing out of nonconforming uses



1 apply to any existing building or premises used for residential
2 (single-family or duplex) or agricultural uses. Nothing in this
3 section shall affect or impair the powers and duties of the
4 director of transportation as set forth in chapter 262.

5 (b) Any final order of a zoning agency established under
6 this section may be appealed to the circuit court of the circuit
7 in which the land in question is found. The appeal shall be in
8 accordance with the Hawaii rules of civil procedure.

9 (c) Each county may adopt reasonable standards to allow
10 the construction of two single-family dwelling units on any lot
11 where a residential dwelling unit is permitted.

12 (d) Neither this section nor any other law, county
13 ordinance, or rule shall prohibit group living in facilities
14 with eight or fewer residents [~~and~~] for purposes or functions
15 that are licensed, certified, registered, or monitored by the
16 State [~~as provided for under section 321-15.6, or in an~~
17 ~~intermediate care facility for individuals with intellectual~~
18 ~~disabilities in the community for persons, including mentally~~
19 ~~ill, elder, disabled, developmentally disabled, or totally~~
20 ~~disabled persons, who are not related to the home operator or~~
21 ~~facility staff; provided that these~~]. A resident manager or a
22 resident supervisor and that person's family, shall not be



1 included in this resident count. These group living facilities
2 shall meet all applicable county requirements not inconsistent
3 with the intent of this subsection [~~and~~], including but not
4 limited to building height, setback, maximum lot coverage,
5 parking, and floor area requirements.

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

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

16 ~~(f) For purposes of this section:~~

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

21 ~~(1) Are recovering from substance abuse;~~

22 ~~(2) Share household expenses; and~~



1 ~~(3) Do not require twenty four hour supervision,~~
2 ~~rehabilitation, or therapeutic services or care in the~~
3 ~~home or on the premises;~~
4 ~~provided that the home shall meet all applicable laws, codes,~~
5 ~~and rules of the counties and State.~~

6 ~~"Developmentally disabled person" means a person suffering~~
7 ~~from developmental disabilities as defined under section 333F-1.~~

8 ~~"Disabled person" means a person with a disability as~~
9 ~~defined under section 515-2.~~

10 ~~"Drug rehabilitation home" means:~~

11 ~~(1) A residential treatment facility that provides a~~
12 ~~therapeutic residential program for care, diagnosis,~~
13 ~~treatment, or rehabilitation for socially or~~
14 ~~emotionally distressed persons, mentally ill persons,~~
15 ~~persons suffering from substance abuse, and~~
16 ~~developmentally disabled persons; or~~

17 ~~(2) A supervised living arrangement that provides mental~~
18 ~~health services, substance abuse services, or~~
19 ~~supportive services for individuals or families who do~~
20 ~~not need the structure of a special treatment facility~~
21 ~~and are transitioning to independent living;~~



1 ~~provided that drug rehabilitation homes shall not include~~
2 ~~halfway houses or clean and sober homes.~~

3 ~~"Elder" means an elder as defined under section 356D-1.~~

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

6 ~~(1) Have been released or are under supervised release~~
7 ~~from a correctional facility;~~

8 ~~(2) Have been released from a mental health treatment~~
9 ~~facility; or~~

10 ~~(3) Are receiving substance abuse or sex offender~~
11 ~~treatment; and~~

12 ~~are housed to participate in programs that help them readjust to~~
13 ~~living in the community.~~

14 ~~"Intermediate care facility for individuals with~~
15 ~~intellectual disabilities in the community" means an~~
16 ~~identifiable unit providing residence and care for eight or~~
17 ~~fewer individuals with intellectual disabilities. Its primary~~
18 ~~purpose is the provision of health, social, and rehabilitation~~
19 ~~services to the individuals with intellectual disabilities~~
20 ~~through an individually designed active treatment program for~~
21 ~~each resident. No person who is predominantly confined to bed~~
22 ~~shall be admitted as a resident of such a facility.~~



1 ~~"Mental health treatment facility" means a psychiatric~~
2 ~~facility or special treatment facility as defined under section~~
3 ~~334-1.~~

4 ~~"Mentally ill person" has the same meaning as defined under~~
5 ~~section 334-1.~~

6 ~~"Totally disabled person" means a "person totally disabled"~~
7 ~~as defined under section 235-1.~~

8 ~~"Treatment program" means a "substance abuse program" or~~
9 ~~"treatment program", as those terms are defined under section~~
10 ~~353G-2.~~

11 ~~(g)]~~ (e) Neither this section nor any other law, county
12 ordinance, or rule shall prohibit the use of land for employee
13 housing and community buildings in plantation community
14 subdivisions as defined in section 205-4.5(a)(12); in addition,
15 no zoning ordinance shall provide for elimination, amortization,
16 or phasing out of plantation community subdivisions as a
17 nonconforming use."

18 SECTION 9. Section 518-3, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§518-3 Invalidity of certain restrictive covenants.** It
21 is the public policy of the State to establish community
22 residences in residential areas. Therefore, any restrictive



1 covenant or other private legal impediment made by any person,
2 association, firm, or corporation which directly or indirectly
3 prevents or restricts the establishment in an area zoned for
4 residential use of a facility licensed by the State as an adult
5 residential care home as defined under section 321-15.1;
6 intermediate care facility for individuals with intellectual
7 disabilities in the community [~~as defined under section [46-~~
8 ~~4(f)]~~]; or special treatment facility as defined under section
9 334-1 shall be void and unenforceable as to such community
10 residences."

11 **PART IV**

12 SECTION 10. The legislature finds that the exclusion of
13 clean and sober homes from application of the residential
14 landlord-tenant code is essential to maintaining the alcohol-
15 and drug-free, home-like environment that supports sobriety and
16 continued recovery of substance abusers.

17 The purpose of this part is to exclude clean and sober
18 homes from chapter 521, Hawaii Revised Statutes, the residential
19 landlord-tenant code.

20 SECTION 11. Section 521-7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§521-7 Exclusions from application of chapter.** Unless
2 created solely to avoid the application of this chapter, this
3 chapter shall not apply to:

4 (1) Residence at an institution, whether public or
5 private, where residence is merely incidental to
6 detention or the provision of medical, geriatric,
7 educational, religious, or similar services;

8 (2) Residence in a structure directly controlled and
9 managed by:

10 (A) The University of Hawaii or any other university
11 or college in the State for housing its own
12 students or faculty or residence in a structure
13 erected on land leased from the university or
14 college by a nonprofit corporation for the
15 exclusive purpose of housing students or faculty
16 of the college or university; or

17 (B) A private dorm management company that offers a
18 minimum of fifty beds to students of any college,
19 university, or other institution of higher
20 education in the State;

21 (3) Occupancy under a bona fide contract of sale of the
22 dwelling unit or the property of which it is a part



- 1 where the tenant is, or succeeds to the interest of,
2 the purchaser;
- 3 (4) Residence by a member of a fraternal organization in a
4 structure operated without profit for the benefit of
5 the organization;
- 6 (5) Transient occupancy on a day-to-day basis in a hotel
7 or motel;
- 8 (6) Occupancy by an employee of the owner or landlord
9 whose right to occupancy is conditional upon that
10 employment or by a pensioner of the owner or landlord
11 or occupancy for a period of up to four years
12 subsequent thereto, pursuant to a plan for the
13 transfer of the dwelling unit or the property of which
14 it is a part to the occupant;
- 15 (7) A lease of improved residential land for a term of
16 fifteen years or more, measured from the date of the
17 commencement of the lease;
- 18 (8) Occupancy by the prospective purchaser after an
19 accepted offer to purchase and prior to the actual
20 transfer of the owner's rights;



1 (9) Occupancy in a homeless facility or any other program
2 for the homeless authorized under part XVII of chapter
3 346;

4 (10) Residence or occupancy in a public housing project or
5 complex directly controlled, owned, or managed by the
6 Hawaii public housing authority pursuant to the
7 federal low rent public housing program; [~~or~~]

8 (11) Residence or occupancy in a transitional facility for
9 abused family or household members[-];or

10 (12) Residence or occupancy in a registered clean and sober
11 home for persons in recovery from alcohol or drug
12 abuse under chapter 321, part XVI."

13 **PART V**

14 SECTION 12. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 13. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.



1 SECTION 14. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 15. This Act shall take effect on July 1, 2014;
4 provided that section 3 shall take effect on July 1, 2015.

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INTRODUCED BY: Will Zygo

Jim

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Josh



Report Title:

Department of Health; Registry for Clean and Sober Homes; County Zoning; Appropriation

Description:

Establishes and appropriates funds for the establishment of a registry for clean and sober homes within the department of health by July 1, 2015; amends the county zoning statute to comply with the federal Fair Housing Amendments Act and repeals definitions for terms that are defined elsewhere in the Hawaii Revised Statutes, are not used, or will be codified elsewhere in the Hawaii Revised Statutes; and excludes clean and sober homes from the residential landlord-tenant code.

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

