

**ACT 193**

H.B. NO. 2224

A Bill for an Act Relating to Group Homes.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

**SECTION 1.** The legislature finds that the clean and sober homes and halfway houses task force was formed in response to legislation introduced in the regular session of 2012. Clean and sober homes and halfway houses, which are located in communities throughout the State, provide housing for individu-

als suffering from substance abuse, including people who may have co-occurring mental health issues, as they transition from the treatment setting to life in the community. The clean and sober homes and halfway houses task force explored ways to develop a plan to ensure that these homes are properly monitored and accountable to meet occupancy, zoning, and permitting requirements, as well as quality standards.

Clean and sober homes and halfway houses allow individuals to return to the community through support in an alcohol- and drug-free, home-like environment, without the rigid structure of a therapeutic living program, which requires being licensed by the State. Notwithstanding the needs of those who benefit from these homes, neighboring residents have expressed concerns over the legality of the operation of clean and sober homes in their immediate vicinity and the poor conduct and lack of neighborly behavior of some residents of the clean and sober homes. While the State's only halfway house is monitored by the agencies that contract for its services, the level of oversight for clean and sober homes varies, depending on the referral source.

Currently, various types of group homes are defined in section 46-4(f), Hawaii Revised Statutes, relating to county zoning. Section 46-4(f), Hawaii Revised Statutes, defines terms that are either no longer needed or are defined elsewhere in the Hawaii Revised Statutes. In addition, inconsistent with the federal Fair Housing Amendments Act, section 46-4(e), Hawaii Revised Statutes, requires that a public informational meeting be held in the affected community before a halfway house, a clean and sober home, or a drug rehabilitation home is located in that community.

As recommended by the clean and sober homes and halfway houses task force, this Act will balance the needs of those requiring the support of the group homes and the concerns of community members.

The purpose of this Act is to help residents and prospective residents of clean and sober group homes to access a stable, alcohol- and drug-free, home-like living environment in residences that comply with federal, state, and county requirements and minimum quality standards. This Act:

- (1) Establishes a registry for clean and sober homes within the department of health; and
- (2) Amends the county zoning statute to better align functions of state and county jurisdictions with federal law.

## PART II

**SECTION 2.** The legislature finds that the primary goals of rehabilitation and recovery are to restore social, family, lifestyle, vocational, and economic supports by stabilizing an individual's physical and psychological functioning. Alcohol- and drug-free environments that are safe, sanitary, and secure promote recovery and assist individuals in becoming self-supporting. The legislature further finds that these environments assist persons recovering from substance abuse to live in the community at-large.

The clean and sober homes and halfway houses task force recognized that there is a need to improve the operation of group homes if group homes are to achieve their intended purposes. While some homes are well-run, others are overcrowded and not well-managed. To increase the number of homes that maintain appropriate living conditions, a voluntary registry will be established to set minimum standards, but also give special advantages to homes on the registry, such as technical support and preferred referral status. The voluntary registry will include specific requirements that homes on the registry must meet and will also provide a framework to monitor the homes. A key function of the

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voluntary registry is to enable agencies referring clients to monitor residences that provide the necessary support for recovery efforts.

The purpose of this part is to establish a registry of clean and sober homes.

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

“§321- Clean and sober homes registry. (a) The department shall establish a voluntary clean and sober homes registry to assist persons recovering from substance abuse to have a safe, clean, and sober environment that supports their recovery. The department shall establish procedures and standards by which homes will be allowed to be listed on the registry, including but not limited to:

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

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

- (1) The name of the holder of the registration;
- (2) The address to which the registration applies;
- (3) The maximum number of persons to reside in the home; and
- (4) The period for which the registration shall be valid.

An owner, operator, or landlord shall not hold the property out to be or advertise to be a “registered clean and sober home” unless the home is registered and in good standing with the clean and sober homes registry.

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

(d) The certificate of registration shall not be transferred to a new owner or operator, or to an address other than as specified on the certificate of registration.

(e) Nothing in this section shall relieve a certificate holder from compliance with other pertinent statutory provisions, nor shall a certificate holder be relieved from compliance with other applicable provisions of federal, state, or county laws, ordinances, or rules.

(f) The department may revoke the certificate of registration if a home ceases to meet established standards or any other applicable federal, state, or county law, ordinance, or rule.

(g) The department may immediately revoke a certificate of registration if there are reasonable grounds to believe that the continued operation of the home presents an immediate danger to residents of the home or the general public.

(h) Any revocation of the certificate of registration shall be made in writing to the certificate holder.

(i) The department shall maintain a listing of all registered clean and sober homes on its website.

(j) The department shall establish a toll-free telephone number to receive complaints regarding clean and sober homes.

(k) This section shall not be construed to abrogate an individual’s right to privacy. Unless otherwise provided by law, the department shall implement sufficient protections to ensure that the identity of a clean and sober home resi-

dent remains confidential and that information collected pursuant to this section is used solely for the purposes of this section.

(1) The department shall adopt rules under chapter 91 as necessary to carry out the purposes of this section.”

SECTION 4. Section 321-191, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Clean and sober home” means a dwelling unit that is intended to provide a stable, independent environment of alcohol- and drug-free living conditions to sustain recovery and that is shared by unrelated adult persons who are recovering from substance abuse.”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2014-2015 for staffing and operating costs to plan, establish, and operate the registry of clean and sober homes.

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

### PART III

SECTION 6. The legislature finds that amendments to section 46-4, Hawaii Revised Statutes, relating to county zoning, that were agreed upon by the clean and sober homes and halfway houses task force in December 2012, are necessary to better align the functions of state and county jurisdictions.

The purpose of this part is to amend section 46-4, Hawaii Revised Statutes, to:

- (1) Clarify the conditions under which the counties shall not prohibit group homes that have up to eight unrelated persons in a dwelling unit;
- (2) Eliminate any conflict with the federal Fair Housing Amendments Act by deleting the requirement for a public informational meeting; and
- (3) Eliminate definitions for terms that are defined elsewhere in the Hawaii Revised Statutes or are no longer needed.

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

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

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
- (2) The areas in which residential uses may be regulated or prohibited;
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;
- (4) The areas in which particular uses may be subjected to special restrictions;
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
- (6) The location, height, bulk, number of stories, and size of buildings and other structures;
- (7) The location of roads, schools, and recreation areas;
- (8) Building setback lines and future street lines;
- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and
- (12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

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

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

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

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

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this

section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

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

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

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents ~~[and] for purposes or functions that are licensed, certified, registered, or monitored by the State [as provided for under section 321-15.6, or in an intermediate care facility for individuals with intellectual disabilities in the community for persons, including mentally ill, elder, disabled, developmentally disabled, or totally disabled persons, who are not related to the home operator or facility staff; provided that those]; provided that a resident manager or a resident supervisor and the resident manager's or resident supervisor's family shall not be included in this resident count. These group living facilities shall meet all applicable county requirements not inconsistent with the intent of this subsection [and], including but not limited to building height, setback, maximum lot coverage, parking, and floor area requirements.~~

~~[(e) 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.~~

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

~~"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.~~

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

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

~~"Drug rehabilitation home" means:~~

- ~~(1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or~~
- ~~(2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;~~

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

~~“Elder” means an elder as defined under section 356D-1.~~

~~“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.~~

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

~~“Mental health treatment facility” means a psychiatric facility or special treatment facility as defined under section 334-1.~~

~~“Mentally ill person” has the same meaning as defined under section 334-1.~~

~~“Totally disabled person” means a “person totally disabled” as defined under section 235-1.~~

~~“Treatment program” means a “substance abuse program” or “treatment program”, as those terms are defined under section 353G-2.~~

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

SECTION 8. Section 518-3, Hawaii Revised Statutes, is amended to read as follows:

**“§518-3 Invalidity of certain restrictive covenants.** It is the public policy of the State to establish community residences in residential areas. Therefore, any restrictive covenant or other private legal impediment made by any person, association, firm, or corporation which directly or indirectly prevents or restricts the establishment in an area zoned for residential use of a facility licensed by the State as an adult residential care home as defined under section 321-15.1; intermediate care facility for individuals with intellectual disabilities in the community [as defined under section 46-4(f)]; or special treatment facility as defined under section 334-1 shall be void and unenforceable as to such community residences.”

PART IV

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

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on July 1, 2014.  
(Approved July 1, 2014.)

**Note**

1. Edited pursuant to HRS §23G-16.5.