Jacqueline Earle
1221 Victoria Street, Apt. 3105
Honolulu, HI 96814
February 7, 2011

The Honorable Rida T. R. Cabanilla, Chair
The Honorable Pono Chong, Vice Chair
House Committee on Housing

RE: Bill: HB 1075
Date: February 9, 2011
Time: 8:30 a.m.
Place: Conference Room 325

Dear Representatives Cabanilla and Chong and Members of the Committee:

This testimony is submitted on behalf of the Board of the Association of Apartment Owners of The Admiral Thomas Apartments ("The Admiral Thomas"), in opposition to HB 1075 as currently written. The Admiral Thomas is a member of the Community Associations Institute ("CAI"). We join in the written testimony submitted by CAI in opposition to this Bill, and add several insights drawn from our own building.

The Admiral Thomas is a small, vertical community, with 148 residential apartments on 35 floors. We do permit animals and pets in accordance with our House Rules, which limit the number and types of animals per apartment and the size of dogs. In addition, our House Rules give us the right to order the removal of any animal which is a nuisance or causes unreasonable disturbance to any resident or guest on the premises. As we understand HB 1075, its lack of important definitional details and its requirement that buildings accept an amorphous category of "comfort animals" in addition to "service animals" would constitute an open-ended override of our House Rules and would add an increased potential for discord in our building.

In fact, although our House Rules permit certain animals and pets, only a small number of residents actually have a pet; most do not. All owners in the building purchased with knowledge of what the House Rules permit regarding animals and pets. Prospective tenants are also apprised of the Rules. Thus, those who have or wish to have pets move into our building with knowledge and acceptance of the limitations in our Rules, and those choosing not to have pets move into our building with knowledge and acceptance of the level of exposure to animals they may have, per the Rules. Expectations are important and are part of the contract of high-rise living.

We understand that disabilities occur. We have no objection to permitting suitable[1] "service animals," as understood for purposes of the Americans with Disabilities Act of 1990 to include "any guide dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability." 28 C.F.R. § 36.104 (2002). We understand that, in addition to being trained in specific service skills, service animals are trained to have a non-threatening demeanor, which is particularly important in a high-rise setting, where residents and guests must ride elevators to come and go from their apartments.

To require anything other than a "service animal," as specifically defined, would negatively impact high-rise buildings and would create an unwarranted intrusion on the ability of condominium boards to govern our communities for the benefit and in the best interests of all residents. Accordingly, we urge the Committee not to approve HB 1075 as written.

Thank you for the opportunity to present written testimony regarding this Bill. If you have questions, I can be reached at 531-7214 or by e-mail at jacq.earle@gmail.com.

Very truly yours,

Jacqueline Earle
President of the Board
The Admiral Thomas Apartments

[1] All types of animals would not be suitable for high-rise living, but most breeds of dogs, if properly trained, should be.

HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 ·PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 9, 2011
Conference Room 325
8:30 a.m.

To: The Honorable Rida Cabanilla, Chair
Members of the House Committee on Housing

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1075

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports H.B. No. 1075 which amends the state's fair housing law to be consistent with provisions found in the federal Fair Housing Act (FHA) by: 1) clarifying the definition of "service animal"; 2) clarifying that a request for a reasonable accommodation by a person with a disability may include the use of a service animal or comfort animal; and 3) defining "comfort animal". The proposed amendments conform with current interpretation of state and federal fair housing lawand they clarify the statutory language rather than change the law.

Currently H.R.S. §515-3(8) prohibits an owner or person engaging in a real estate transaction from denying equal opportunity to use and enjoy a housing accommodation to a person with a disability who uses a guide dog, signal dog, or service animal. The terms "guide dog" and "signal dog" are unnecessary and should be deleted because they are included in the definition of the term "service animal".

In addition, H.R.S. §515-3(11) prohibits any owner or person engaging in a real estate transaction from refusing to make reasonable accommodations in rules, policies, practices or services, if the accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy the housing unit. Under current federal and state law interpretations, a reasonable accommodation can include the use of a service animal or comfort animal. See, Joint Statement of HUD and the DOJ on Reasonable Accommodations, Question 6 Example 3, May 17, 2004; see also, Janush v. Charities Housing Development Corp., 169 F.Supp.2d. 1133, 1136 (N.D.Cal.2000) (in which the court found a triable issue of fact as to whether a tenant's birds and cats could constitute a reasonable accommodation for her mental disability); Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission, 121 Cal. App. 4th 1578, 18 Calo. Rptr. 3d 669 (2004) (reasonable housing accommodation under California Fair Employment Housing Act could include the use of a companion dog); Sec'y, U.S. Dep't of Hous. and Urban Dev. v. Dutra, HUD ALJ 09-93-1753-8, 1996 WL 657690 Nov. 12, 1996 (cat providing emotional support that eased anxiety and fibromyalgia symptoms a reasonable accommodation); Sec'y, U.S. Dep't of Hous. and Urban Dev. v. Riverbay Corp., HUD ALJ 02-93-0320-1, 1995 WL 108212 Mar. 1, 1995 (companion dog a reasonable accommodation). Therefore, the proposed amendments move the service animal provisions from H.R.S. §515-3(8) to the reasonable accommodations subsection and also include the clarification that a reasonable accommodation can include the use of a comfort animal. The amendments also contain a definition of the term "comfort animal".

For these reasons, the HCRC supports H.B. No. 1075 and urges your favorable consideration.

DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 9, 2011

TESTIMONY TO THE HOUSE COMMITTEE ON HOUSING

House Bill 1075 – Relating to Fair Housing Reasonable Accommodations

The Disability and Communication Access Board supports House Bill 1075 relating to fair housing and the provision of reasonable accommodation for persons with disabilities. The purpose of the bill is to conform Hawaii's housing discrimination law in §515-3, Hawaii Revised Statutes, to the current Fair Housing Act with respect to the provision of service animals and comfort animals.

We note that there is another bill, House Bill 601 Relating to Service Animals, which is broader and addresses the issue of service animals in places of public accommodation/public conveyances as well as in real estate transactions under §515-3, Hawaii Revised Statutes. We believe that these two (2) bills could possibly be combined.

Thank you for the opportunity to testify.

Respectfully submitted,

Barbara Fischlowitz-Leong

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

Francine Wai

FRANCINE WAI
Executive Director

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 11:03 PM
To: HSGtestimony
Cc: emmatsumoto@hotmail.com
Subject: Testimony for HB1075 on 2/9/2011 8:30:00 AM

Testimony for HSG 2/9/2011 8:30:00 AM HB1075

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Eric M. Matsumoto
Organization: Mililazni Town Association
Address: 95-303 Kaloapau St. Mililani, HI
Phone: 282-4324
E-mail: emmatsumoto@hotmail.com
Submitted on: 2/7/2011

Comments:
This bill, as written, will leave AOAOs to the prospect of numerous kinds of comfort animals mandated through the courts if passed. Request this bill be deferred.

HAWAII FIRST

COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

February 4, 2011

TESTIMONY HB 1075

OPPOSED

Hawaii First is the third largest association management company in Hawaii and regularly conducts association meetings.

This Bill is disguised to be consistent with federal and state law. Nothing could be further from the truth and lacks reality of what is happening in associations.

Let's be clear, associations and management companies support accommodations for disabled persons. Regularly associations approve and will continue to approve accommodations for disabled persons.

Many owners choose to live in an association that is pet free for various reasons including severe allergies and fear of animals. After purchasing their apartment, some owners seek means to have a pet and get around the rules. Residents can purchase online certificates that their animal meets service/comfort animal qualifications.

I copied the following article from the Internet:

Can i claim two of my cats are emotional support animals?

I do suffer from depression, but haven't seen my psychiatrist for a year or so, my property manager wants me to get rid of one of my cats, but they both came together, and they have made my life a whole lot better, is there any way to reason with her about this, do I need any documentation that states they are emotional support?
by Pearl

Best Answer - Chosen by Asker

Yes, you do need documentation, from your psychiatrist or another mental health professional who is currently treating you. Here's an example of the type of letter your mental health professional will have to write:
http://servicedogcentral.org/content/nod…

You can try to claim both as emotional support animals, but that doesn't mean you'll succeed. Discuss this with your mental health provider and how it will impact your health. Ask him to address this issue in his letter.

HAWAII FIRST

COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

Please note: It is not enough to be mentally ill to qualify for an accommodation for an emotional support animal. You must actually be disabled by mental illness to qualify for any protections under the Fair Housing Amendments Act to have an ESA in "no pets" housing.

Approximately 1 person in 4 in the U.S. has suffered from, is suffering from, or will suffer from mental illness at some point in their lives. Only six percent, on the other hand, are actually disabled by mental illness. The vast majority are not disabled by their illness, either because it is temporary or not severe enough to qualify.

Example: a person with 20/40 vision has a vision impairment, but is not blind. The severity of the vision loss is what determines whether the person is merely impaired or is disabled. Just as most vision impairments are not disabling, neither are most mental illnesses.

This Bill opens the door for misuse of the terms "emotional suppor", "comfort", "service" animal.

This is an important issue and prefer that a task force of qualified persons address this issue to clarify and propose rules that are fair and work for all.

I OPPOSE HB 1075.

Warmest aloha,

Richard Emery
President

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HAWAII CHAPTER
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

The Honorable Rida T.R. Cabanilla, Chair
Committee on Housing

RE: BILL: HB1075
DATE: February 9, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 325

Dear Representative Cabanilla and Members of the Committee:

This testimony is submitted on behalf of the Hawai`i Legislative Action Committee of the Community Associations Institute ("CAI"). CAI is a non-profit national and statewide organization whose members include condominium associations, planned community associations, residential cooperatives, homeowners, managing agents, and others involved in creating, managing, servicing, and living in common interest communities. The Hawai`i LAC is committed to protecting the rights of handicapped and disabled persons, but is concerned that the Committee may not understand the full context of this bill and that it is not the simple housekeeping matter that it purports to be.

It is, of course, the Legislature's prerogative to amend Chapter 515 to achieve the purposes which the Legislature believes are necessary and desirable and its function to weigh competing interests and opinions, including whether private contracts (such as condominium governing documents) must yield to the public good. Indeed, the purpose of Chapter 515 is to invalidate discriminatory clauses of many kinds that were once commonly imbedded in deeds and covenants and discriminatory practices that were once considered acceptable in real estate transactions. The Hawai`i LAC would note, however, that this bill, as drafted, may actually be contrary to the aim of protecting the rights of the handicapped and disabled and may actually put more obstacles in their path than now exist. We respectfully urge, therefore, that the bill be amended to create a task force or some other mechanism by which all of the stakeholders affected by this complex issue will have an opportunity to participate collaboratively without the pressures created by legislative deadlines and the adversarial context of committee hearings.

The stated purpose of this bill is to make "the reasonable accommodations provisions in state fair housing law consistent with federal Fair Housing Act case law and interpretations." However, the proponent of the bill, presumably the Hawai`i Civil Rights Commission, conveniently ignores, and apparently assumes that the Legislature won't be aware of, the fact that **the bill is contrary to the governing federal case law in Hawai`i and therefore is not consistent with the FHA case law and interpretation in the District of Hawai`i, which is the only reported case addressing this question in the U.S. Ninth Circuit**.

In *Prindable v. Association of Apartment Owners of 2987 Kalakaua,* 304 F. Supp. 2d 1245 (D. Hawai`i 2003), affirmed on other grounds by *Dubois v Association of Apartment Owners of 2987 Kalakaua,* 453 F. 3d. 1175 (9th Cir. 2005), U.S. District Court Judge Alan C. Kay ruled:

> The term "service animal" is not defined by the FHA or the accompanying regulations, but it is understood for purposes of the Americans with Disabilities Act of 1990 ("ADA") to include "any guide dog, or other animal ***individually trained*** to do work or perform tasks for the benefit of an individual with a disability ...." [Footnote omitted] 28 C.F.R. § 36.104 (2002). This description comports with the example of a reasonable accommodation for a blind rental applicant provided by the agency regulations to the FHA, see 24 C.F.R. § 100.204(b) (2002), and with case law. [Citations Omitted]. The Court agrees with and adopts the ADA definition for purposes of the reasonable accommodation requirement of § 3604(f)(3)(B). . . .
>
> Plainly, most animals are not equipped "to do work or perform tasks for the benefit of an individual with a disability." See Bronk, 54 F.3d at 429 n. 6. There must instead be something--***evidence of individual training***--to set the service animal apart from the ordinary pet. [Citations omitted.] The primary handicap at issue in this case is mental and emotional (specifically, depression, anxiety and dizziness) rather than physical in nature. It therefore follows that the ***animal at issue must be peculiarly suited to ameliorate the unique problems of the mentally disabled*** . . . This is not a taxing requirement, however, and there are no federally-mandated animal training standards.

Id. at 1256. In footnote 25 of the opinion, Judge Kay further explained that a pet that simply makes an owner feel better does not qualify as a service animal. Otherwise, as Judge Kay notes, there would be no stopping point as every person suffering from depression, anxiety, or low self-esteem would be entitled to an animal of his/her choice. Judge Kay found that there must be some type of training to make the animals into service animals:

> Plaintiff's counsel suggested canines (as a species) posses the ability to give unconditional love, which simply makes people feel better. Although this may well be true, counsel's's reasoning permits no identifiable stopping point: every person with a handicap or illness that caused or brought about feelings of depression, anxiety or low self esteem would be entitled to the dog of their choice, without regard to individual training or ability. And if certain people liked cats, fish, reptiles or birds better than dogs, there would be no logical reason to deny an accommodation for these animals. The test would devolve from "individually trained to do work or perform tasks" to "of some comfort." The FHA–a sweeping enactment–is not quite so broad. Certainly, "some type of training is necessary to transform a pet into a service animal." *In re Kenna Homes,* 557 S.E.2d at 797.

The law in this area is not settled, however, again contrary to the impression given by the bill's proponents. For example, in *Overlook Mutual Homes, Inc. v. Spencer*, 666 F.Supp.2d 850 (S.D.

Ohio), the U. S. District Court disagreed with Judge Kay, noting that the ADA and the FHA had different purposes and that, in its opinion, "reasonable accommodation" in the FHA context should be interpreted to include untrained comfort animals.[1] Given this division of opinion, it is respectfully suggested that the Committee not accept as gospel that this is merely a housekeeping bill that reflects settled law.

Beyond these legal arguments, however, there is a basic philosophical issue. The governing documents of many condominium associations expressly prohibit owners and occupants from keeping animals of any kind. The existence of these prohibitions reflects the desire of the owners to avoid the problems that can be caused by even well-trained pets kept by responsible pet owners. In some cases, owners or tenants may have chosen to live in a no-pets building due to severe allergies or even a pathological fear of dogs or other animals.[2] This would be bad enough if the claims of people demanding the right to keep pets as service or comfort animals were all legitimate. However, even a cursory search of the internet discloses a plethora of sites boasting that, for a modest fee and completion of a simple application, they will provide an impressive certificate stating that any animal is a trained service or comfort animal without ever seeing the animal or verifying that it has been trained in any way or actually assists the allegedly disabled person or requesting any verification of the person's disability. Some of these sites specifically promote their services as a means of evading no-pets rules. One site states:

> **Yes, You Can Take Your Dog With You!** It's no secret that many businesses simply aren't pet-friendly, even though most of the population is. A large number of our clients register their dogs as Certified Service Animals or Emotional Support Animals (ESAs) not just to accompany them into stores, restaurants, motels, or on airline flights (for no extra cost), but to successfully qualify for housing where pets aren't allowed. Our Service Dog Certification documents formalize and simplify these processes and make qualifying for special housing hassle-free. If you and your service dog become certified with NSAR, both of you are immediately protected under federal law (ADA).
> ***Complete Service Animal Certification Kit - ONLY $64.95!***

See http://www.nsarco.com/. We respectfully suggest that Committee members visit this site to see for themselves how easy it is for anyone to self-certify that they are disabled (without even specifying their disability) and to self-certify that their animal is a service or emotional support animal (without providing any proof of training or information as to how the animal enables them to overcome their disability).

Sad to say, it is evident that many non-disabled "scam artists" are perfectly willing to hijack the ADA and fair housing laws and to bully public accommodations and housing providers with

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[1] Note, also, that the ADA Title III rules and regulations have now been amended, effective March 1, 2011, to expressly exclude untrained comfort animals from the definition of "service animal."

[2] For example, a person already living in a no-pets building who was attacked by a dog as a child, or even as an adult, may be terrified by all dogs, no matter how small or well-behaved. Is allowing even a trained service animal a "reasonable accommodation" under those circumstances? Whose disability has priority?

threats of complaints to civil rights enforcement agencies in order to take ordinary pets into places where they are otherwise prohibited.

Also, as Judge Kay noted, defining "comfort animal" to mean "any animal that provides support, well-being, companionship or therapy for a person with a disability," means that "if certain people liked cats, fish, reptiles or birds better than dogs, there would be no logical reason to deny an accommodation for these animals." That being the case, if this bill is enacted in its present form, there would be no limit on the kinds of creatures that condominiums could be forced to allow as comfort animals.

What this means is that enacting this bill will not end the battle over reasonable accommodation requests for comfort animals and service animals. It will simply shift the battle to "dueling experts" as to the issues of whether the person requesting the accommodation is disabled as defined by Chapter 515[3] and whether allowing the requested animal is actually necessary to afford the person an equal opportunity to enjoy the use of the person's apartment. This, in turn, is likely to lead to more, rather than less, litigation. What is needed is rational, thoughtfully written legislation that addresses the interests of all stakeholders and truly protects the handicapped and disabled by preventing scammers from hijacking protective legislation.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 697-6004 or by email at plahne@alf-hawaii.com.

COMMUNITY ASSOCIATIONS INSTITUTE
HAWAI'I LEGISLATIVE ACTION COMMITTEE

PHILIP L. LAHNE

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[3] "[W]here a tenant suffers from a disability which is not apparent to a person untrained in medical matters, it is reasonable for a landlord or person similarly situated to require a second concurring opinion from a qualified physician selected by the landlord or person similarly situated to substantiate the tenant's need for a service animal." *In re Kenna Homes*, 557 S.E.2d at 799.