

# **SB 892**

## **RELATING TO SERVICE ANIMALS.**

Adds a definition of "service dog" in provisions relating to dog licensing, to conform with new ADA rules; expands the definition of "service animal" to include "comfort animals", to conform with FHA rules regarding non-discrimination in the sale or rental of housing.



## 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 15, 2011

### TESTIMONY TO THE SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

#### Senate Bill 892 - Relating to Service Animals

The Disability and Communication Access Board supports Senate Bill 892 with significant amendments. We have prepared a proposed SD1 for your consideration.

The purpose of this bill is to conform §143-4, Hawaii Revised Statutes (HRS), regarding dog licensing to applicable provisions of the Americans with Disabilities Act; §347-13, HRS to the recently issued Americans with Disabilities Act rules for Titles II and III, effective March 15, 2011 and §515, HRS to the current Fair Housing Act as it relates to the issue of service animals.

#### Relating to Licensing

We request amendments to Section 2, which provides a mechanism for the designation of service animal status on a dog registration to eliminate such requirement. The Department of Justice does not require service animals, which they limit to the species of dogs, to be certified. Thus, the current provisions in §143-4, HRS relating to the Counties' licensing requirement are confusing and unnecessary.

Our proposed changes (as reflected in the proposed SD1) are as follows:

- Section 2, p. 3, lines 19–21, current language can be deleted.
- Section 2, p. 3 line 22 to p. 4, line 4, new language to be deleted.

The above language is no longer necessary if the Counties do not designate service animal status on the registration.

#### Relating to Public Places and Public Conveyances

Section 3 of the bill amends §347-13, HRS relating to public places and public conveyances. The proposed language inserts a definition for service dog that is consistent with the Americans with Disabilities Act. It also amends the language to reflect more politically current, people-first language. Also, since the Department of Human Services does not have rules for this section and does not enforce it, developing rules is unnecessary and such language is deleted.

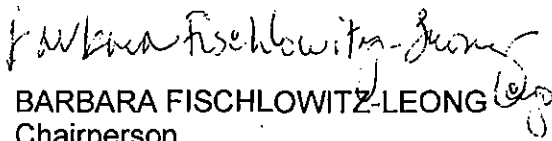
Relating to Housing

Section 4 of the bill amends §515-3, HRS relating to housing and nondiscrimination. Comparable federal law is the Fair Housing Act, rather than the Americans with Disabilities Act. Neither the federal law nor its implementing rules, provide a definition for a service animal or a comfort animal. In fact, the requirement under federal law is to provide a "reasonable accommodation" with no additional specificity other than that developed by case law.

We therefore recommend that the definitions of specific animals be deleted.

Thank you for the opportunity to testify.

Respectfully submitted,



BARBARA FISCHLOWITZ-LEONG  
Chairperson  
Legislative Committee



FRANCINE WAI  
Executive Director

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## A BILL FOR AN ACT

RELATING TO SERVICE ANIMALS.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Clarify Section 143-4, Hawaii Revised Statutes,  
3 regarding dog licensing to appropriately conform provisions  
4 applicable to service dogs with the Americans with Disabilities  
5 Act (ADA);

6 (2) Conform Section 347-13, Hawaii Revised Statutes,  
7 relating to public conveyances to Titles II and III of the ADA;  
8 and

9 (3) Conform Section 515-3, Hawaii Revised States relating  
10 to discriminatory practices in real estate transactions to  
11 reflect the language in the federal Fair Housing Act, as it  
12 relates to individual with disabilities.

13 SECTION 2. Section 143-4, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§143-4 **Issuance of license and tags.** Upon the receipt of  
16 the license fee, the director of finance shall issue to the  
17 person paying the fee a license stating the following:

18 (1) The name and address of the person to whom the license is  
19 issued;

- 1 (2) The year for which the license is paid;  
2 (3) The date of payment;  
3 (4) A description of the dog for which the license is issued;  
4 and

- 5 (5) The number of the metal tag issued for the dog[ ~~and~~  
6  ~~(6) Any dog approved by the director of finance pursuant to~~  
7  ~~rules established by the director to be a service dog shall be so~~  
8  ~~designated on the license].~~

9 The director of finance shall at the same time issue and  
10 deliver to the person a metal tag of such form and design as the  
11 director of finance may designate with a serial number and the  
12 year for which it is issued plainly inscribed thereon, which tag  
13 shall be attached to a collar around the neck of the dog for  
14 which the license has been issued. The fee for the tag shall be  
15 set by each county council; provided that, until and unless  
16 provided by ordinance, the fee shall be 10 cents.

17 ~~[The director of finance, pursuant to chapter 91, shall~~  
18 ~~adopt rules for the licensing of guide, signal, and service~~  
19 ~~dogs.]~~

20 SECTION 3. Section 347-13, Hawaii Revised Statutes, is  
21 amended to read as follows:

22 "§347-13 ~~[Blind, partially blind, physically handicapped,]~~  
23 Persons who are blind, visually impaired, disabled; public  
24 places; public conveyances. (a) [The blind, visually

1 ~~handicapped,~~ Persons who are blind, visually impaired, and  
2 otherwise [~~physically~~] disabled are entitled to full and equal  
3 accommodations, advantages, facilities, and privileges of all  
4 common carriers, airplanes, motor vehicles, railroad trains,  
5 motor buses, street cars, boats, or any other public conveyances  
6 or modes of transportation, hotels, lodging places, places of  
7 public accommodation, amusement, or resort, and other places to  
8 which the general public is invited, subject only to the  
9 conditions and limitations established by law and applicable  
10 alike to all persons.

11 (b) Every person who is blind, deaf, [~~or~~] visually  
12 impaired, or [~~physically handicapped person~~] disabled shall have  
13 the right to be accompanied by a [~~guide, signal, or~~] service dog,  
14 especially trained for the purpose[~~,~~] of assisting the person, in  
15 any of the places listed in subsection (a) without being required  
16 to pay an extra charge for the [~~guide, signal, or~~] service dog;  
17 provided that the [~~blind, deaf, or visually or physically~~  
18 ~~handicapped~~] person shall be liable for any damage done to the  
19 premises or facilities by such dog. No such dog shall be  
20 considered dangerous merely because it is unmuzzled.

21 (c) Every physically [~~handicapped~~] disabled person shall  
22 have the right to use a life jacket or other flotation device in  
23 a public swimming pool; provided that:

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1           (1) The ~~[handicapped]~~ physically disabled person suffers  
2 from a physical disability or condition which requires the use of  
3 a life jacket or other flotation device; and

4           (2) The ~~[handicapped]~~ physically disabled person obtains a  
5 statement signed by a licensed physician or physician assistant  
6 attesting to the ~~[handicapped]~~ physically disabled person's need  
7 to use a life jacket or other flotation device.

8           ~~[(d) The director of human services shall adopt rules  
9 pursuant to chapter 91 necessary for the purposes of this  
10 section.]~~

11           For the purposes of this section:

12           "service dog" means any dog that is individually  
13 trained to do work or perform tasks for the benefit of an  
14 individual with a disability, including a physical, sensory,  
15 psychiatric, intellectual, or other mental disability."

16           SECTION 4. Section 515-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "§515-3 Discriminatory practices. It is a discriminatory  
19 practice for an owner or any other person engaging in a real  
20 estate transaction, or for a real estate broker or salesperson,  
21 because of race, sex, including gender identity or expression,  
22 sexual orientation, color, religion, marital status, familial  
23 status, ancestry, disability, age, or human immunodeficiency  
24 virus infection:

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1           (1) To refuse to engage in a real estate transaction with a  
2 person;

3           (2) To discriminate against a person in the terms,  
4 conditions, or privileges of a real estate transaction or in the  
5 furnishing of facilities or services in connection therewith;

6           (3) To refuse to receive or to fail to transmit a bona fide  
7 offer to engage in a real estate transaction from a person;

8           (4) To refuse to negotiate for a real estate transaction  
9 with a person;

10          (5) To represent to a person that real property is not  
11 available for inspection, sale, rental, or lease when in fact it  
12 is available, or to fail to bring a property listing to the  
13 person's attention, or to refuse to permit the person to inspect  
14 real property, or to steer a person seeking to engage in a real  
15 estate transaction;

16          (6) To print, circulate, post, or mail, or cause to be  
17 published a statement, advertisement, or sign, or to use a form  
18 of application for a real estate transaction, or to make a record  
19 or inquiry in connection with a prospective real estate  
20 transaction, that indicates, directly or indirectly, an intent to  
21 make a limitation, specification, or discrimination with respect  
22 thereto;

23          (7) To offer, solicit, accept, use, or retain a listing of  
24 real property with the understanding that a person may be



1 discriminated against in a real estate transaction or in the  
2 furnishing of facilities or services in connection therewith;

3 (8) To refuse to engage in a real estate transaction with a  
4 person or to deny equal opportunity to use and enjoy a housing  
5 accommodation due to a disability [~~because the person uses the~~  
6 ~~services of a guide dog, signal dog, or service animal;~~] provided  
7 that reasonable restrictions or prohibitions may be imposed  
8 regarding excessive noise or other problems caused by- [~~these~~  
9 ~~animals.~~] any housing accommodations. ~~For the purposes of this~~  
10 ~~paragraph.~~

11 ~~"Blind" shall be as defined in section 235-1;~~

12 ~~"Deaf" shall be as defined in section 235-1;~~

13 ~~"Guide dog" means any dog individually trained by a licensed~~  
14 ~~guide dog trainer for guiding a blind person by means of a~~  
15 ~~harness attached to the dog and a rigid handle grasped by the~~  
16 ~~person;]~~

17 "Reasonable restriction" shall not include any restriction  
18 that allows any owner or person to refuse to negotiate or refuse  
19 to engage in a real estate transaction; provided that as used in  
20 this paragraph, the "reasonableness" of a restriction shall be  
21 examined by giving due consideration to the needs of a reasonable  
22 prudent person in the same or similar circumstances. [~~Depending~~  
23 ~~on the circumstances, a "reasonable restriction" may require the~~

1 ~~owner of the service animal, guide dog, or signal dog to comply~~  
2 ~~with one or more of the following:~~

3 ~~(A) Observe applicable laws including leash laws and pick-~~  
4 ~~up laws;~~

5 ~~(B) Assume responsibility for damage caused by the dog; or~~

6 ~~(C) Have the housing unit cleaned upon vacating by~~  
7 ~~fumigation, deodorizing, professional carpet cleaning, or other~~  
8 ~~method appropriate under the circumstances.~~

9 ~~The foregoing list is illustrative only, and is neither~~  
10 ~~exhaustive nor mandatory;~~

11 ~~"Service animal" means any animal that is trained to provide~~  
12 ~~those life activities limited by the disability of the person;~~

13 ~~"Signal dog" means any dog that is trained to alert a deaf~~  
14 ~~person to intruders or sounds;]~~

15 (9) To solicit or require as a condition of engaging in a  
16 real estate transaction that the buyer, renter, or lessee be  
17 tested for human immunodeficiency virus infection, the causative  
18 agent of acquired immunodeficiency syndrome;

19 (10) To refuse to permit, at the expense of a person with a  
20 disability, reasonable modifications to existing premises  
21 occupied or to be occupied by the person if modifications may be  
22 necessary to afford the person full enjoyment of the premises. A  
23 real estate broker or salesperson, where it is reasonable to do  
24 so, may condition permission for a modification on the person

1 agreeing to restore the interior of the premises to the condition  
2 that existed before the modification, reasonable wear and tear  
3 excepted;

4 (11) To refuse to make reasonable accommodations in rules,  
5 policies, practices, or services, when the accommodations may be  
6 necessary to afford a person with a disability equal opportunity  
7 to use and enjoy a housing accommodation;

8 (12) In connection with the design and construction of  
9 covered multifamily housing accommodations for first occupancy  
10 after March 13, 1991, to fail to design and construct housing  
11 accommodations in such a manner that:

12 (A) The housing accommodations have at least one accessible  
13 entrance, unless it is impractical to do so because of the  
14 terrain or unusual characteristics of the site; and

15 (B) With respect to housing accommodations with an  
16 accessible building entrance:

17 (i) The public use and common use portions of the housing  
18 accommodations are accessible to and usable by [disabled]  
19 persons [?] with disabilities;

20 (ii) Doors allow passage by persons in wheelchairs; and

21 (iii) All premises within covered multifamily housing  
22 accommodations contain an accessible route into and through the  
23 housing accommodations; light switches, electrical outlets,  
24 thermostats, and other environmental controls are in accessible

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1 locations; reinforcements in the bathroom walls allow  
2 installation of grab bars; and kitchens and bathrooms are  
3 accessible by wheelchair; or

4 (13) To discriminate against or deny a person access to,  
5 or membership or participation in any multiple listing service,  
6 real estate broker's organization, or other service,  
7 organization, or facility involved either directly or indirectly  
8 in real estate transactions, or to discriminate against any  
9 person in the terms or conditions of such access, membership, or  
10 participation."

11 SECTION 5. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.

17

18

INTRODUCED BY: \_\_\_\_\_

19

**1 Report Title:**

**2 Service Animals; Definitions; ADA Rules; FHA**

**3**

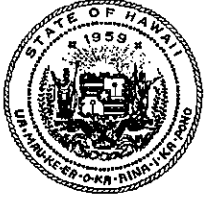
**4 Description:**

**5 Adds a definition of "service dog" in provisions relating to dog**

**6 licensing, to conform to new ADA rules for Titles II and III; and**

**7 to conform with FHA rules regarding non-discrimination in the**

**8 sale or rental of housing.**



# HAWAI'I CIVIL RIGHTS COMMISSION

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

February 15, 2011  
Conference Room 224  
2:45 p.m.

To: The Honorable Will Espero, Chair  
Members of the Senate Committee on Public Safety, Government  
Operations and Military Affairs

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

Re: S.B. No. 892

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 has several concerns about SB 892, which purports to conform state law to recently finalized U.S. Department of Justice (DOJ) rules regarding service animals that apply to Title II of the Americans with Disabilities Act (ADA), relating to government services and programs, and Title III of the ADA, relating to public accommodations. Initially, it must be noted that the rules do **not** apply to: a) Title I of the ADA, relating to employment; b) the federal Fair Housing Act (FHA) relating to housing situations; or to c) the federal Air Carriers Access Act (ACAA). ADA Title I employment provisions, the FHA and the ACAA have broader definitions and interpretations of "service animal" and reasonable accommodations for persons with disabilities under those laws can include the use both service animals and emotional support/comfort animals.

In addition, state law can provide more protections than federal law. See, California Federal Sav. and Loan Ass'n v. Guerra, 479 U.S. 272, 107 S. Ct. 683 (1987) (federal law is a “floor” beneath which protections against discrimination should not drop, rather than a “ceiling” above which protections cannot rise under state discrimination laws.) While the rules regarding service animals under the ADA Titles II and III narrowly define “service animals” to include dogs (and miniature horses) only, state statutes regarding reasonable accommodations for persons with disabilities in public accommodations may be interpreted more broadly.

While the HCRC does not oppose conforming H.R.S. §347-13 to the ADA Titles II and III administrative rules, the ADA Title II rules do not necessarily control interpretation of the state law which prohibits discrimination in places of public accommodations, H.R.S. Chapter 489. Accordingly, Section 1 of the bill should be amended to clarify that the purpose of the bill is to conform the affirmative provisions of H.R.S. §347-13, and not “state law” generally, to the public conveyances provisions of Title II and III of the ADA.

In Section 4 of the bill, which deals with service animals and comfort animals in the fair housing context, the Commission also opposes limiting the definition of “service animal” to dogs only. HUD, in its final rules regarding animals in HUD assisted housing, states that the ADA Title II and III definitions of service animals only as dogs does not apply to the FHA. See, 24 C.F.R. Part 5, October 27, 2008. Similarly, the definition of “service animal” under H.R.S. chapter 515 is not limited to exclusively to dogs, and a person with a disability may request a reasonable accommodation in the form of an assistance animal which may or may not be a “service animal.”

The Disability and Communications Access Board (DCAB) has drafted amendments to S.B. 892 that address these and other concerns. For the reasons stated above, the HCRC supports and urges adoption of DCAB’s proposed amendments in an S.D.1.

Senator Willie Espero, Chair  
Committee on Public Safety, Government Operations and Military Affairs  
Hawaii State Capitol  
415 Beretania Street  
Honolulu, HI 96813

February 15, 2011

Re: Support for SB 892 Relating to Service Animals

Dear Senator Espero and members of the Committee on Public Safety, Government Operations and Military Affairs,

My name is Joy Nakata-Muranaka and I am blind and use a Guide Dog. I am in support except in one section of SB 892 to make State laws conform to federal law regarding service animals. The section is with Fair Housing.

Reason:

At this current time, the rental contract does not contain proper clauses to restrict or remove aggressive or troublesome dogs. If a comfort and service dog encounters each other in a common area and the comfort dog causes a problem, the service dog will continuously encounter the ill behaved dog.

Thank you for the opportunity to testify.

Sincerely,

*Joy Nakata-Muranaka*  
*Guide Dog Handler*



Senator Willie Espero, Chair  
Committee on Public Safety, Government Operations and Military Affairs  
Hawaii State Capitol  
415 Beretania Street  
Honolulu, HI 96813

February 15, 2011

Re: Support for SB 892 Relating to Service Animals

Dear Senator Espero and members of the Committee on Public Safety, Government Operations and Military Affairs,

My name is Jeanne Torres and I am blind. I use a guide dog. I support SB 892 to make State laws conform to federal law regarding service animals.

I value my independence and the freedom to travel in my community safely and effectively. The passing of this bill will help to establish a safe environment in which service dogs may concentrate to safely and effectively perform their duty in assisting their handlers.

There is still the growing concern of misrepresentation of service dogs in public but this bill being enacted will help reduce some interferences we experience from all sorts of animals by restricting public access to dogs only.

To allow people with disabilities to remain independent in the community, we need to have State law conform with federal law to lessen the confusion about when animals are allowed to go into places of public accommodation and government facilities to receive services.

Thank you for the opportunity to testify.

Sincerely,

*Jeanne torres*  
*Guide Dog Handler*

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**From:** robie lovinger [rezumes@hotmail.com]  
**Sent:** Saturday, February 12, 2011 11:47 PM  
**To:** PGM Testimony  
**Subject:** Testimony in support of The Service Animal Bill, SB 892

H. Louise Esselstyn, M.Div.  
Senate Committee on Public Safety, Government Operations and Military Affairs  
Senator Willie Espero, Chair  
Tuesday, February 15, 2011  
Capitol, Room 224  
2:45 p.m.

Aloha Senator Willie Espero, Chair, and  
Members of the Senate Committee on Public Safety, Government Operations and Military Affairs.

As a person with disabilities, I am in full support of The Service Animal Bill, SB 892.

Respectfully Submitted by

H. Louise Esselstyn, M.Div.  
808-227-6785-personal cell  
92-1085 Kakoo Place  
Kapolei, HI 96707

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 13, 2011 11:33 AM  
**To:** PGM Testimony  
**Cc:** drlucy@hawaii.rr.com  
**Subject:** Testimony for SB892 on 2/15/2011 2:45:00 PM

Testimony for PGM 2/15/2011 2:45:00 PM SB892

Conference room: 224  
Testifier position: support  
Testifier will be present: No  
Submitted by: Lucy Miller  
Organization: Individual  
Address:  
Phone:  
E-mail: [drlucy@hawaii.rr.com](mailto:drlucy@hawaii.rr.com)  
Submitted on: 2/13/2011

Comments:

Dear Senator Espero and members of the Committee on Public Safety

My name is Lucy Miller. I am deaf and partner with a hearing dog who alerts me to environmental sounds that I don't hear, thus greatly increasing my safety both in my home and out in the community.

I support SB 892 which provides compliance with the recent modifications to the federal ADA guidelines, particularly with respect to clarifying the definition of service animals and persons with disabilities. The intent of these clarifications is to lessen confusion in interpreting and applying the original language of the ADA.

Thank you for the opportunity to testify.

Sincerely,  
Lucy Miller, Ph.D.  
Lihue, Hawaii

Honorable Members of the PGM Committee:

I am writing in support of SB892. As a person who uses a guide dog to travel throughout Hawaii, I feel it is important to bring our definitions of service dogs and comfort animals into agreement with the new ADA Rules that were passed in September 2010. These rules will take effect on March 15, 2011. The definitions more clearly define the difference between service dogs and other animals and comfort animals. Not only is it easier for us as residents of Hawaii to have these clear definitions in place, but it also makes it easier for tourists who visit Hawaii to observe the laws regarding service animals if they are the same as the ADA guidelines and most likely match those of the states they are traveling from.

Thank you for the opportunity to share my testimony. I urge you to please pass SB892.

Respectfully,  
Charlene Ota