



HAWAI‘I CIVIL RIGHTS COMMISSION

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

January 24, 2014
Rm. 325, 2:00 p.m.

To: The Honorable Karl Rhoads, Chair
Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 1420

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s 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. Art. I, Sec. 5.

H.B. No. 1420 requires owners or handlers of service dogs to obtain a service dog tag from county animal control officers and requires service dogs to wear such tags as well as a leash, harness or cape that identifies the dog as a service dog when entering a public accommodation. The HCRC opposes this bill because it is more restrictive than federal law, and conflicts with the HCRC’s interpretation of HRS Chapter 489 to allow other types of assistance animals as reasonable accommodations.

While state law protections against discrimination can be more expansive than federal law, federal law is a “floor” beneath which state law protections against discrimination cannot drop. *California Federal Sav. And Loan Ass’n v. Guerra*, 479 US 272, 290-292 (1987). U.S. Department of Justice (DOJ) rules relating to service animals state that a public accommodation shall not require documentation, such as proof that an animal has been certified, trained or licensed as a service animal (see 28 CFR §36.302). However, to protect the public from abuse by persons who do not have service animals, the public accommodation can

ask whether the animal is required because of a disability and what work or task the animal has been trained to perform. In addition, the public accommodation can require the service animal to be under the control of the animal's handler at all times, be housebroken and have a harness, leash or other tether, unless the handler is unable to use these because of the handler's disability or if the use of these would interfere with the animal's work or tasks. If the above conditions are not met, the public accommodation may exclude the animal. HB 1420 is more restrictive and conflicts with these DOJ rules and would be invalid.

In addition, there are no state or federal standards for determining whether a dog is a trained service animal, and the bill would prevent out-of-state persons with disabilities from using their service animals while visiting the state. Furthermore, the HCRC enforcement section interprets HRS Chapter 489 as allowing other types of assistance animals as reasonable accommodations in public places.

For these reasons, the HCRC encourages the committee to hold this bill.



January 23, 2014

Testimony in Support of HB 1420

Rep. McKelvey and Members of the House Judiciary Committee:

The Pacific Pet Alliance is a Hawai'i non-profit organization that promotes responsible pet ownership through education and advocacy.

Dogs are working animals that perform many tasks to assist people on a daily basis. Their role as therapy dogs has greatly enriched the lives of many disabled members of our community. Their presence is becoming more visible as we increasingly encounter these dogs on a daily basis. The Americans with Disabilities Act has done much to support the use of therapy dogs, thus further increasing their visibility. It is unfortunate, however, that a few irresponsible dog owners have found ways to purchase "therapy dog" vests or insignias as a way of taking their pets into places usually off-limits to animals.

We support this bill to ensure the rights of the disabled to allow their therapy dogs to function as intended. We suggest that representatives of the disabled community and officials from county animal control organizations should meet to decide upon appropriate and uniform tagging to identify therapy dogs throughout our state. The tagging should be easily identifiable and must not impede the working function of the dog.

We would encourage all dog owners to be responsible by engaging their dogs in obedience training, making sure they are housebroken, and not trying to pass off their pets as "therapy/service" animals.

The Pacific Pet Alliance respectfully asks this Honorable Committee to adopt HB 1420 in its current form.

Respectfully submitted,
PACIFIC PET ALLIANCE

Lynn Muramaru, President

Pacific Pet Alliance · a Hawai'i Nonprofit Corporation · P. O. Box 6158 · Kane'ohe, HI 96744-6158



HAWAII DISABILITY RIGHTS CENTER

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

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THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Judiciary Testimony on H.B. 1420 Relating to Service Animals

Friday, February 24, 2014, 2:00 P.M.
Conference Room 325

Chair Rhoads and Members of the Committee:

The Hawaii Disability Rights Center wants to offer its comments on this bill. So that the record is clear, we note at the outset that we are very sympathetic to the problem identified in the bill. Our office works hard to protect and fight for the rights of individuals with disabilities. We establish priorities and objectives each year, and have an intake screening process for the purpose of allocating our limited resources towards individual with disabilities whose cases are meritorious and whose needs are genuine.

I mention that because we have seen first-hand and come to understand all too well that the concerns outlined in this bill are real. We have had individuals contact our office with alleged claims of discrimination based upon a failure to accommodate their service animals, only to discover that these "service" animals were in reality nothing more than pets. We are also aware of advertisements on the internet and other means by which individuals can obtain so called "identification papers" to present for the purpose of falsely verifying that their pet is a service animal.

We absolutely do not support efforts of that nature. In fact, we are extremely upset when we see such conduct because it creates a negative backlash and further stigmatization against individuals who truly have disabilities and who are the very people we are created to assist. For that reason, conceptually we support the type of program or approach that is set forth in this bill, inasmuch as it would provide a mechanism for individuals with genuine disabilities and genuine service animals



HAWAII'S PROTECTION AND ADVOCACY SYSTEM FOR PEOPLE WITH DISABILITIES
HAWAII'S CLIENT ASSISTANCE PROGRAM



to easily demonstrate that and avoid lengthy or detailed questions.

The difficulty however is that despite our general agreement in principle with the bill, it nonetheless appears to run afoul of federal law. The ADA and the Fair Housing Act often govern matters of this nature and they provide that no law can go beyond the parameters of their requirements. If it does then it is in violation. Those laws require merely that the individual demonstrate that they have a disability (though they are not required to reveal it with specificity or discuss it in detail) and that the animal is trained to assist them in some fashion to cope with the manifestations of their disability. If they can establish that, then they are entitled to the benefits of the disability laws and can receive reasonable accommodations for their service animals. There is no requirement or provision in the federal law for a certification process or for a state or local governing authority to further issue any license or tag or any other insignia that would establish the bona fide nature of the animal. There is also a general prohibition on charging additional fees to individuals with disabilities such as is contemplated in this bill. Therefore, the essential provisions in this bill exceed and violate the requirements of the federal law.

For all these reasons, while we would like to support the bill's efforts, we have to point out that in our view the bill would be not be sustainable under the current federal law. We would however also be willing and interested in working with the Committee and the chair and any others in the advocacy community to see if there might be a way or an approach that can accomplish the aims of the bill, but which would be in harmony with the federal law. We certainly stand ready to assist the Committee if it chooses to pursue that direction.

Thank you for the opportunity to testify on this measure.

Facsimile Transmission Sheet

Date: January 23, 2014

To:
Telephone:
Fax:

House Judiciary Committee

586-8504

From:
Telephone:
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Hawaii Disability Rights Cent

(808) 949-2922

(808) 949-2928

Pages:

Message:

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Thank you for the opportunity to testify on this measure.

HB1420, Relating to Service Animals
Judiciary; Chairman, Rep. Rhoads

PLEASE KILL THIS BILL!

I have a disability, and I also have a certified service dog. I realize JUD members may think you are doing my community a service, but the absolute opposite is the case. You will be causing us enormous, unnecessary problems.

There are several reasons this bill should be killed:

1. IT IS ILLEGAL. HB1420 contradicts the law of the land, specifically, the Americans with Disability Act (ADA). ADA explicitly states that only two questions may be asked of a person with a service animal. The first is, Is this a service dog? The second is, What tasks does the service animal perform? **NO SPECIAL IDENTIFICATION FOR THE SERVICE ANIMAL MAY BE REQUIRED**, as required by HB1420.

2. HB1420 is vague and cannot be implemented. First, what training would be provided for an animal control official? Second, what criteria would such an official use to determine who gets a tag and who doesn't? Third, how would such an official make decisions? Fourth, how would objectivity be made part of the process? 5. It is illegal to ask disabled people to prove they are disabled or to ask that a service animal be required to perform the duties they are trained for (ADA). Since that is so, how could any one make a judgment about who is and who is not qualified?

3. The current "county animal control agencies" in most or all counties are the Humane Societies. The professionalism of these societies varies greatly from island to island. The Humane societies in most counties are overwhelmed. How could they pick up this function? In fact, the Humane Society in Honolulu recently has given up activities that they were licensed to do. How could they add another, even more complicated, activity?

4. People with disabilities are the very people who are least able to get around in their communities. Asking them to do so to get their tags creates another barrier in their lives.

5. This bill has only one small example of an incident where a fake service dog fought with a real service dog. That is a very slim basis, to say the least, for developing a law. This is a case where no law is necessary. And even if there were a whole slew of provable cases, this law is an absolutely incorrect and impossible way to do something about this situation.

Thank you for killing this bill.

Aloha, joel

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Dr. Joel Fischer, ACSW
Professor (Ret.)
University of Hawai`i, School of Social Work

President, 19-4
Democratic Party