



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 15, 2017

TESTIMONY TO THE HOUSE COMMITTEE ON AGRICULTURE

House Bill 1599 – Relating to Service Animals

The Disability and Communication Access Board (DCAB) takes no position on House Bill 1599 Relating to Service Animals, but provides comments. The purpose of this bill is to establish penalties for those who make false representations regarding service or emotional support animals to deter people from using fraud to circumvent Associations of Apartment Owners' and Homeowner Associations' rules by defining an emotional support animal.

As written, the bill is confusing because it cites both the Americans with Disabilities Act (ADA) and the Federal Fair Housing Act (FHA) as they relate to service animals. However, both laws are different in their definitions of service animals and assistance animals.

The ADA does not apply to housing, unless it is public housing. The definition of "service animal" provided in the bill relates specifically to the ADA Titles II (state and county governments) and III (places of public accommodation).

The FHA has different requirements for a tenant to ask a landlord to have an assistance animal as a reasonable accommodation in housing. Service animals are part of a broader category called "assistance animals." Under FHA, there are requirements for assistance animals in housing. An assistance animal may be an animal other than a dog that could include a service animal, emotional support animal, therapy animal, or comfort animal.

"Assistance animal" is defined under Section 12-46-302 Definitions, Hawaii Administrative Rules (HAR) promulgated by the Hawaii Civil Rights Commission that relates to assistance animals in housing. There is no definition for the term in Hawaii Revised Statutes. The bill also uses the term "disability animal" which is not defined in the bill nor used in any other federal or state law.

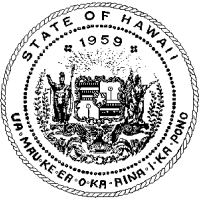
Although the bill states that its purpose is in reference to people misrepresenting service animals in housing, is the intent of the bill to also go beyond housing to cover people with disabilities taking service animals into state and county government agencies and places of public accommodation? Without further clarification, the intent of the bill is vague and inconsistent in its current form with amendments suggested to various sections of the bill in reference to "service animals," "emotional support animals," and "disability animals."

Thank you for the opportunity to offer comments.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 15, 2017
Rm. 312, 8:40 a.m.

To: The Honorable Richard P. Creagan, Chair
Members of the House Committee on Agriculture

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

H.B. No. 1599

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.

The stated purpose of H.B. No. 1599 is to “... establish penalties for those who make false representations regarding service, or emotional support, animals to deter people from using fraud to circumvent Associations of Apartment Owners’ and Homeowners Associations’ [no pet] rules.”

H.B. No. 1599, if enacted, would amend the Penal Code to establish a new criminal offense of “Misrepresenting the use of a disability animal.” This offense would be a misdemeanor, punishable by imprisonment for up to one year and a fine of up to \$2000.

H.B. No. 1599 would also amend HRS Chapter 347 to add a definition of “emotional support animal.”

The HCRC opposes H.B. No. 1599, because it would have a chilling effect on the exercise of rights by persons with disabilities under both the federal Fair Housing Act and state fair housing law (HRS Chapter 515).

Background Information: Assistance Animals as Reasonable Accommodations in Housing

Under both the federal Fair Housing Act (FHA) and state fair housing law (HRS Chapter 515), a person with a disability can request the use of an assistance animal as a reasonable accommodation, which may involve making an exception to a “no pets” or “no animals” rule. The requested accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation, including public and common use areas.

A person with a disability who can request the use of an assistance animal as reasonable accommodation is a person who has a physical or mental impairment which substantially limits one or more major life activities.

An assistance animal is an animal that works, assists, provides emotional support, or performs tasks for a person with a disability. Assistance animals can include: service animals, support animals, therapy animals, and comfort animals. They are **not** pets.

Federal and state fair housing law on the use of assistance animals as a reasonable accommodation in housing is substantially different from the law on the use of service animals under Titles II and III of the Americans with Disabilities Act (ADA), because the fair housing law definition of “assistance animal” is broader than the definition of “service animals” under the ADA, as defined by the U.S. Department of Justice (DOJ).

Under both federal and state fair housing law, when a resident with a disability makes a request for the use of an assistance animal as a reasonable accommodation, a housing provider (including an AOA) may ask the resident to provide information from a treating health care professional, mental health professional, or social worker that verifies that the resident is a person with a disability, and that the assistance animal is needed to alleviate one or more symptoms of the person’s disability, if the disability and disability-related need are not obvious.

Discussion

1) Criminalizing the “misrepresentation” of the use of a “disability animal” in housing, “in an attempt to receive the benefits and protections afforded under federal or state law,” will have a

chilling effect on the exercise of rights under both federal and state fair housing law.

H.B. No 1599 amends HRS Chapter 708 by adding this new section:

"§708- Misrepresenting the use of a disability animal. (a) A person commits the offense of misrepresenting the use of a disability animal if the person knowingly and willfully misrepresents themselves, through conduct or verbal or written notice, as being disabled in an attempt to receive the benefits and protections afforded under federal or State law for the use of a service animal or an emotional support animal.

(b) Misrepresenting the use of a disability animal is a misdemeanor."

Both federal and state fair housing law allow for verification that a person requesting the use of an assistance animal as a reasonable accommodation is a person with a disability (*i.e.*, substantially limited in one or more major life activities), and that the requested assistance animal is needed to alleviate one or more symptoms of the person’s disability. Housing providers are obligated to engage in an interactive process in order to address these requests for a reasonable accommodation. A failure of a resident to provide the necessary verification might be the basis for denial of the request, but it should not impose criminal liability.

Under both federal and state fair housing law, retaliation for exercise of rights is prohibited, because retaliation chills the exercise of those rights. Criminalization of the “misrepresentation of the use of a disability animal” will invite housing providers to threaten retaliatory prosecution of charges against residents who dare to request the use of an assistance animal as a reasonable accommodation, providing a weapon for coercion and intimidation of those our fair housing laws are meant to protect.

2) “Assistance animal” is already defined in state fair housing law.

H.B. No. 1599 amends HRS Chapter 347 by adding this definition “emotional support animal”:

"§347- Emotional support animal, defined. As used in this chapter, "emotional support animal" means any animal that a medical professional has determined provides therapeutic benefit for an individual with a disability.

Hawai‘i state fair housing law can be found at HRS Chapter 515 and HAR Title 12, Chapter 46, Subchapter 20. HAR § 12-46-306(a)(1) addresses in detail the discriminatory practice of denial of the use of

an assistance animal by a person with a disability. “Assistance animal” is defined in HAR § 12-46-302, as follows:

“**Assistance animal**” means an animal that is needed to perform disability-related work, services or tasks for the benefit of a person with a disability, or is needed to provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animals may include, but are not limited to, service animals, therapy animals, comfort animals or emotional support animals. Assistance animals may have formal training or may be untrained, any may include species other than dogs.

Amending HRS Chapter 347 to add the definition of “emotional support animal” will not have the desired effect of limiting the fair housing law definition of “assistance animal” under HRS Chapter 515 and HAR Title 12, Chapter 46, Subchapter 20. It could, however, cause unnecessary confusion.

Conclusion

This bill proposes to criminalize “misrepresenting the use of a disability animal.” This will have the effect of chilling the rights of persons with disabilities to exercise their right to request reasonable accommodation in the use of an assistance animal, under federal and state fair housing laws.

The HCRC opposes H.B. No. 1599.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 1:45 PM
To: AGRtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for HB1599 on Feb 15, 2017 08:40AM

HB1599

Submitted on: 2/13/2017

Testimony for AGR on Feb 15, 2017 08:40AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	Yes

Comments: 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 individuals 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, the intent of this bill seems to be reasonable. The current version of the bill attempts to apply to service animals, as well as emotional support animals. The latter are governed by different rules and issues surrounding them more frequently occur in the Fair Housing Act context as opposed to the ADA public accommodations context. Yet the problem does persist there as well. We have seen instances of individuals who have paid a “mental health professional” a fee via the internet to write a letter verifying their need for the emotional support animal as a means of requesting an accommodation from a “no pets policy” in a condominium. Yet the “professional” had never met the individual and was not necessarily a licensed medical or psychological provider. Literally speaking, since the title of the bill is “Relating To Service Animals”, this vehicle may be too narrow to use as a means to address the issue of emotional support animals. In any event, if the Committee is interested in advancing this measure and furthering discussion we are happy to be of assistance.

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identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 5:06 PM
To: AGRtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for HB1599 on Feb 15, 2017 08:40AM

HB1599

Submitted on: 2/13/2017

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Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	Yes

Comments: We supported this bill last year as a humanitarian attempt to assist a particular elderly couple that wished to reside together. We were disheartened by the rigidity and lack of compassion demonstrated by the Department of Health and the Department of Human Services. The arguments they put forth made no sense at all. That individual case aside, this bill makes perfect sense as a matter of public policy in general. These isolated situations of married couples seeking to live together are few and rare and will do nothing to disrupt the Medicaid system or alter the number of beds that are available. For that reason, we hope that the Legislature will exercise its discretion to direct the Departments to allow these scenarios under parameters as outlined in this proposal.

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To: The Honorable Representative Richard P. Creagan, House Committee on Agriculture

From: Lisa Ann Strother

Re: Testimony in Support of HB1599, Relating to Service Animals

Thank you for hearing HB1599, which defines emotional support animals and makes it a misdemeanor to knowingly make a misrepresentation regarding a service, or emotional support, animal. I support this measure because it allows individuals with emotional and mental health needs to continue receiving assistance from a service or emotional support animal, while recognizing and addressing the need to establish appropriate guidelines for businesses, and repercussions for those who abuse this privilege.

This bill appears to have addressed many of the concerns regarding the stakeholders for this issue. Most importantly, individuals have the right to protect their privacy regarding their emotional and mental health needs, and often their specific needs may not be immediately obvious (unlike a visually impaired person with a guide dog). Defining service dogs and emotional support animals allows individuals in need to continue to seek comfort and support from their animal, without the need to disclose private medical information.

Additionally, Associations of Apartment Owners and Homeowners Associations have the right to protect their property and uphold their rules. This bill clarifies the guidelines regarding service animals and further protects apartment and homeowners from individuals who seek to circumvent the rules and misrepresent their needs. Classifying the misrepresentation of service and emotional support animals as a misdemeanor will deter individuals from abusing the privilege and violating the established rule of law regarding this issue.

Thank you for the opportunity to submit this testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 11:07 PM
To: AGRtestimony
Cc: d.bt@live.com
Subject: *Submitted testimony for HB1599 on Feb 15, 2017 08:40AM*

HB1599

Submitted on: 2/13/2017

Testimony for AGR on Feb 15, 2017 08:40AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Brucato	Individual	Support	No

Comments:

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Testimony on HB1599 by Dr. Carl Oguss, Director of the East
Hawai'i Dog Psychology Center, Hilo, HI

Aloha, while the problems with fraudulent misrepresentation of dogs as being properly trained service or emotional support dogs is very significant throughout the islands, and I honor your attention to this important set of concerns, I must respectfully suggest the following edits to the text of HB 1599 as it currently exists.

These edits are offered for your reflection and careful consideration. Please feel free to ask me any questions you may have c/o easthawaiidogpsychologycenter@yahoo.com.

"SECTION 1. The legislature also finds that current federal law only allows two questions to be asked of support animal owners:

(1) Is this a service animal?

(2) What task does this service animal provide?"

These questions are commonly asked, but are highly ill advised, and likely would not withstand a Constitutional challenge.

These questions ought be omitted and a different and improved method of verification used instead.

Suggested change: While I know it seems a safe thing to do to continue to follow this two-question guideline, as it comes from Federal law and is reflected in current State law and practice.

However, the first question is a confrontation of the sort reserved for disabled persons who are handlers of a service animal; no similar questioning is sanctioned of a person availing themselves of any other disabled persons' accommodations or exceptions from law as it applies to nondisabled persons. We are not authorized to ask someone using a white cane whether they are really blind---not even if we strongly suspect that they are fraudulently representing themselves as being blind to gain some advantage, such as better pan-handling results. We are not permitted to confront someone with a handicapped parking placard parking in a handicapped space, and ask them questions about whether they are honest, or are breaking the law, which is exactly the intent of asking the dog handler whether they are legally allowed to have the animal with them in the store, etc..

Adult citizens are presumed to know the laws that effect them.

Therefore, handlers of dogs are presumed to know that non-service dogs are widely prohibited from many places.

Therefore, if someone has a dog with them in such a place, they are presumed to either be law abiding, because the dog is a service dog, or to be a law breaker who is aware of that fact, and knowingly brings the dog where he or she should not go.

This clearly is a pattern of behavior that treats people of a subclass of the disabled differently from all other disabled

persons, thereby violating their Constitutional rights to equal treatment under the law and privacy regarding the nature of their disability.

Since this kind of questioning is allowed under current practice, and it is allowed to be carried out by all sorts of employees and others with no training in the ADA or service dog issues, or Constitutional protections of privacy, a great number of abuses of disabled persons results, and increasingly will lead to litigation.

Being treated as a suspect, essentially "profiling" all apparent service dog users as being likely to be law breakers needing of being stopped and questioned, is bad enough, but the second question almost always leads to unconstitutional violations of privacy.

How is a disabled person supposed to list the tasks their dog does for them, without in the process and of necessity, revealing the nature of their disability, which you will remember is nobody's business but their doctor's and themselves. The ADA is clear as day, you should never have to (otherwise) disclose the nature of your disability to exercise your rights.

And of what practical use is someone to make of the answers to these two questions? They are in no position to challenge the answers, so a liar gets away as cleanly as a real service dog user

does. The employee, etc., cannot demand that the tasks be performed to demonstrate that the dog can and does indeed perform services. So what is the use value of these questions?

My conclusion is that it is dangerous legally for any business or governmental employee to be authorized to interrogate a particular class of disabled persons, and it is morally unjustifiable because it helps no one and causes harm to members of our already most disadvantaged citizens, the disabled.

2. Not establishing a state-wide system of registration of service and emotional support dogs, and instead retaining HB1599's lack of documentation will have many disadvantages.

I suggest that we establish a state-wide registration system for all service and emotional support dogs along the following lines:

1. Registration consists of:

a) Letter from a doctor or therapist currently licensed within the State of Hawaii declaring that their patient would likely benefit from having a dog trained for service and/or emotional support work, and, in the case of service dog prescriptions, stating that the patient currently suffers from one or more recognized disabilities, as listed in the DSM-5.

b) the licensing, ID chip, Vet Check Letter (which states the dog

has had all vaccinations and suffers from no health problems), and personal information describing the dog, including a photo of it's face and a side view of its entire body.

c) payment of some fee to the State for the registration processing and ID card and collar tag.

This would entitle the disabled person to train the dog to do the needed tasks, either with a trainer or on their own (both of which are allowed under both Federal and Hawaiian law).

They would receive Service Dog In Training IDs.

When training is complete, I suggest that they must get evaluated by a dog trainer (who would register with the state to be part of this program for certification of service dogs). The final part of their registration would be:

d) letter from registered dog trainer declaring that the dog predictably and reliably:

1) performs all relevant tasks for his or her handler, and

2) is well socialized and acclimated to all types of environments likely to be visited.

The handler would then (pay a second fee?, and) receive an ID card and dog collar tag stating that the dog is a certified service dog.

With this system in place, any employee who wonders if a dog

is a service dog could just check the ID on the collar or ask to see the wallet card, which is an act exactly similar to checking to make sure that a car parked in a handicapped parking space has a handicapped parking placard on display that can be properly seen and thereby verified.

This change eliminates the legally dangerous and emotionally contentious confrontations between employees, airline personnel, etc., and people with dogs, and earns the State a bit of income it could use.

I would be happy to consult on a project to create and design this sort of registration ID.

3. "**§347- Emotional support animal, defined.** As used in this chapter, "emotional support animal" means any animal that a medical professional has determined provides therapeutic benefit for an individual with a disability. "

This definition has many serious problems:

a) we cannot have a system where the medical professional is put in the position of having to make a determination about any particular dog's ability to provide emotional support to a particular patient.

The doctor or therapist's proper role is documenting their determination that an emotional support dog might benefit their patient. They have no training in ethology or in the use of dogs in medicine.

So the first problem in the language of the bill is the reference to a specific animal and their role in the medical professional's

determination; a general prescription for an emotional support dog avoids this problem.

b) Emotional support dogs do not provide any therapeutic benefit to the handler. The concept of "therapeutic benefit" means "the patient's condition will improve as a result". Instead, the value in having an emotional support dog is for emotional comfort and distraction from undesirable thoughts or feelings. The person is not expected to get better; they are expected to feel better, and thereby be better able to function.

d) Not to be picky, but details in the laws matter: the entire idea of emotional support dogs is to benefit people who do NOT have a recognised disability in the DSM series. Therefore, it is factually inaccurate to say in HRS 347's text that the person to have the emotional support dog has been determined to have a "disability"---that effectly would REMOVE ALL emotional support dogs from practice, as they are a catagory of helping dogs who are defined in terms of their ability to help folks without disabilities. If the handler has a disability, he or she does not need the "emotional support" designation; they qualify for a service dog and all of the extended benefits and freedoms that come with that.

4. "**§708- Misrepresenting the use of a disability animal.** (a) A person commits the offense of misrepresenting the use of a disability animal if the person knowingly and willfully misrepresents themselves, through conduct or verbal or written notice, as being disabled in an attempt to receive the benefits and protections afforded under federal or State law for the use of a service animal or an emotional support animal."

a) There is no such thing as a "disability animal" and its use here in law confused the service and emotional support distinction.

b) The problem is not the misrepresentation of of the person as a disabled person, and being disabled by itself is no defense against abuses of the ADAAA's mandates on service animal use---i.e., a truly disabled person brings a non-service dog into a store; the problem is the training of the dog and not the status of the person. It is no defense here to say, "I am disabled." because that only qualifies them to take part in the service dog certification program of the State---it doesn't make him or his dog compliant.

c) Since suggested the text to HRS 708 refers to emotional support dogs, it can not then require that the handler be disabled---again: disability is relevant only for service dogs; emotional support dogs are for persons with a documented clinical need which itself is not a recognized disability in DSM-5.

Mahalo for your consideration of my suggestions for edits to the text of HB1599!

Dr. Carl Oguss

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 15, 2017 6:46 AM
To: AGRtestimony
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for HB1599 on Feb 15, 2017 08:40AM*

HB1599

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Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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