



HAWAI‘I CIVIL RIGHTS COMMISSION

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

January 30, 2018
Rm. 329, 9:30 a.m.

To: The Honorable John M. Mizuno, Chair
Members of the House Committee on Health and Human Services

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

H.B. No. 1823

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. 1823 is to “... establish penalties for those who make false representations regarding service dogs 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. 1823, 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. 1823 would also amend HRS Chapter 347 to add a definition of “emotional support animal.”

The HCRC opposes H.B. No. 1823, 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 1823 amends HRS Chapter 708 by adding this new section:

"§708- Misrepresenting the use of a service dog or emotional support animal. (a)

A person commits the offense of misrepresenting the use of a service dog or emotional support 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 service dog or emotional support 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. 1823 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 service dog or emotional support 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. 1823.

HB-1823

Submitted on: 1/28/2018 1:03:56 PM

Testimony for HHS on 1/30/2018 9:30:00 AM

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

Comments:

To: Louis Erteschik

Subject: service animals

We are very sympathetic to the problems identified in this bill. We have had individuals contact our office with alleged claims of discrimination based upon a failure to accommodate their service animal or emotional support animal only to discover that these animals were really pets. We have also seen advertisements on the internet by which individuals can obtain "identification papers" to present for the purpose of falsely verifying that their pet is a service animal or where for a fee a "mental health professional" will write a letter verifying their need for an emotional support animal. We absolutely do not support such efforts and we believe it creates a negative backlash and further stigmatization against individuals who truly do have disabilities and who are the people we were created to assist. For that reason the intent of the bill seems reasonable. Whether the criminal provision in this bill is the best way to achieve that or is feasible to enforce is a matter of debate within the disability community. However, we would be happy to work with this Committee if it desires to advance the measure and engage in further discussion.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

January 30, 2018

TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

House Bill 1823 - Relating to Service and Emotional Support Animals

The Disability and Communication Access Board (DCAB), while supporting the intent of House Bill 1823 to provide greater enforcement on the proliferation of 'fake' service and emotional support animals, has some concerns regarding this bill. Our primary concern relates to the enforcement of such a law and the criminalization of the action by the placement of the penalty in the penal code. How would an entity such as a state/local government office or a privately-owned place of public accommodation proceed with a charge of an offense without violating the federal Department of Justice rules by asking impermissible questions? Such a law might encourage an entity to ask questions to make its own determination of potential fraud. To whom would a complaint be filed and would it be realistically pursued, given the fact that such animals are not required to be licensed, certified, registered, or formally trained by a school?

Aside from our concerns on enforcement, there are several technical concerns in the wording of the bill.

- In the proposed §708-____(a) the bill states that it is an offense if a person knowingly and willfully misrepresents themselves as being disabled. In the proposed §708-____(b) the bill speaks to misrepresenting the use of a service dog or emotional support animal. This is unclear whether the offense is misrepresentation as a person with a disability or having a service or emotional support animal or both? A person, perhaps with a diagnosed psychiatric disability, may be a person with a disability who has an animal that is a pet, not a service or emotional support animal, or who truly believes that the animal provides a service to him or her.
- In Section 1 the first sentence states that the ADA allows those with disabilities to be accompanied by an emotional support animal, which is incorrect. The second sentence states that emotional support animals are considered service animals under the Fair Housing Act, which is also incorrect.

We emphasize that we acknowledge the seriousness of the problem and are aware that other states are pursuing similar laws, some of which have been enacted. However, according to the Animal Legal and Historical Center, there have not been any prosecutions. We suggest a more thorough study, perhaps by the Legislative Reference Bureau, to research how the enforcement is handled in other jurisdictions before implementation. We also support efforts for a national registry, although this must be initiated at the federal level with consistent standards and policies.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

FRANCINE WAI
Executive Director



January 28, 2018

Testimony in **Support** of HB 1823

Rep. Mizuno and Members of the House Committee on Health and Human Services:

The Pacific Pet Alliance is a Hawai'i non-profit organization that promotes responsible pet ownership through education and advocacy. We appreciate the opportunity to submit this testimony in strong **support** of HB 1823, as currently written.

An essential part of being a responsible pet owner means to abide by existing laws and regulations, and not to misrepresent oneself as being disabled to take advantage of laws and regulations intended to protect and benefit the disabled. Pet owners who misrepresent themselves and their pets in such a manner not only harm the protected interests of the disabled, but also the reputations and public perceptions of responsible pet owners.

Thank you again for this opportunity to testify. We respectfully request that you vote "yes" on HB 1823.

Lynn Muramaru
Board Member
Pacific Pet Alliance



Hawaiian Humane Society
People for animals. Animals for people.

2700 Waiālae Avenue Honolulu, Hawaii 96826
808.356.2200 • HawaiianHumane.org

Date: Jan. 29, 2018

To: Chair Rep. John M. Mizuno
Vice Chair Rep. Bertrand Kobayashi
and Members of the Health & Human Services Committee

Submitted By: Stephanie Kendrick, Public Policy Advocate
Hawaiian Humane Society, 808-356-2217

RE: Comments on HB 1823:
Relating to Service and Emotional Support Animals
Tuesday, Jan. 30, 9:30 a.m., Capitol conference room 329

Aloha Chair Mizuno, Vice Chair Kobayashi and Committee Members,

On behalf of the Hawaiian Humane Society, thank you for hearing our concerns regarding HB 1823, the purpose of which is to define emotional support animals and make it a misdemeanor to knowingly make a misrepresentation regarding a service dog or emotional support animal.

We have concerns about whether HB 1823 will effectively address the issues raised in the bill.

A 2017 report released by the Pew Charitable Trusts reviewed efforts to criminalize the misrepresentation of service and emotional support animals. A legal expert reported that there had not been a single prosecution in any of the 19 states that have passed such measures.

Absent a change in federal law that would permit the registration of trained service animals, it is difficult to see how the provisions of HB 1823 would be enforced. Unenforceable laws drain tax-payer funded resources and result in a frustrated public.

Supporting pet-friendly policies so there are more opportunities to integrate pets into our daily lives may be a better way to address the concerns outlined in HB 1823.

Mahalo for your consideration of our comments. Please let me know if I can be of assistance.



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John Shilf, Rainbow Sales & Marketing, *Advisor*
Barry Taniguchi, KTA Superstores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*

TO:
Committee on Health and Human Services
Rep. John M. Mizuno, Chair
Rep. Bertrand Kobayashi, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Tuesday, January 30, 2018
TIME: 9:30am
PLACE: Conference Room 329

RE: HB 1823 Relating to Service and Emotional Support Animals

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Ensuring that all patrons have access to our businesses is a high priority for our members. People who misrepresent pets as service or support animals can jeopardize the health and safety of all patrons in food establishments, and create confusion about why it's important for real service and support animals to be allowed in businesses. We believe that this measure will help curb the practice of falsely claiming a pet as a service or support animal, and by extension will help strengthen accessibility for those with real service and support animals. We urge you to pass this measure and we thank you for the opportunity to testify.



**AMERICAN
KENNEL CLUBSM**

Phil M. Guidry, J.D.
Director, Policy Analysis
Government Relations

Friday, January 26, 2018

Representative John M. Mizuno, Chairman
Hawaii House Health and Human Services Committee
Room 403, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: American Kennel Club Supports House Bill 1823 (as introduced)

Chairman Mizuno and Members of the House Health and Human Services Committee:

The American Kennel Club (AKC) writes today in support House Bill 1823, which seeks to create a misdemeanor for those found to have knowingly and 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 Hawaii law for the use of service dog or emotional support animal.

The American Kennel Club was established in 1884 and promotes the study, breeding, exhibiting, and advancement of purebred dogs. We represent over 5,100 dog clubs nationally, including 42 clubs in Hawaii. We advocate for the purebred dog as a family companion, advance canine health and well-being, protect the rights of dog owners, and promote the ideals of responsible dog ownership.

Service dogs are defined as those that are individually trained to do work or perform tasks for people with disabilities. The AKC strongly supports public accommodations that allow individuals with disabilities to use service dogs.

The AKC strongly condemns characterizing dogs as service animals when they are not, or attempting to benefit from a dog's service dog status when the individual using the dog is not a person with a disability.

The American Kennel Club has always been a strong supporter of service dogs. Members of AKC-affiliated clubs initiated the use of dogs in wartime that led to the development of dogs to assist the disabled. AKC supports the Americans with Disabilities Act and other laws that assure special accommodations for individuals with service animals. Dog enthusiasts take pride in the accomplishments of these amazing animals and applaud their contributions to society that help disabled individuals live more independently.

Service dogs are trained to behave submissively when they encounter another service dog. They are socialized to know to lie under a table in a restaurant or to stay at their

owner's side. They are trained to not react to noises and disturbances that upset other dogs. Brining untrained dogs into situations for which they are ill-equipped, however, puts everyone at risk. Untrained animals fraudulently presented as service dogs in public places have been known to start fights, get up on restaurant furniture, relieve themselves in stores, and damage property. Perhaps an even more disturbing result is that those with legitimate service dogs are being denied access to public places where they have the right to go because of the poor behavior of pets and their owners who fraudulently attempt to pass them off as a service dog.

Because its provisions are in line with our principles and seek to remedy the problems associated with dogs purposefully mislabeled as service/assistance animals, we support House Bill 1823 and respectfully request you pass the bill out of committee when you consider it on Tuesday, January 30, 2018. It would be my pleasure to provide greater detail and explanations for our support of HB 1823. Please do not hesitate to contact me for any reason at 919-816-3503.

Sincerely,



Phil M. Guidry, JD
Director, Policy Analysis
AKC Government Relations

CC: Reps. Ward, Brower, Cachola, Hashem, Ito, Say, Souki – HB 1823 Sponsors
Lynn Muramaru, Pacific Pet Alliance

HB-1823

Submitted on: 1/29/2018 12:18:20 PM

Testimony for HHS on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	Yes

Comments:

Associa Hawaii is one of the largest association management companies in Hawaii. We have first hand experience on the problems created by abuse. We all agree of the needs and support of the disabled, but those that falsely claim a disability only hurt everyone including the disabled.

My suggestion is that the Bill be amended to delete the word "themselves" and include language that makes it a misdemeanor for the medical professional too who signs a false statement. This is the approach of most other states to curb this problem.

HB-1823

Submitted on: 1/26/2018 1:21:37 PM

Testimony for HHS on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Oda		Support	No

Comments:

kobayashi2 - Kevin

From: STEPHANIE MCLAUGHLIN <smclaughlin808@gmail.com>
Sent: Friday, January 26, 2018 9:33 AM
To: hhstestimony
Subject: OPPOSE HB 1823

Please vote against this bill. It is unfair to fine someone who needs a comfort dog when he/she rides an airplane. Thank you. Stephanie McLaughlin, 95-310 Haakualiki Place, Mililani, Hawaii, 96789, phone 808-3844764

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Stephanie McLaughlin

"Be the change you wish to see in the world."

HB-1823

Submitted on: 1/26/2018 7:39:24 PM

Testimony for HHS on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall		Support	No

Comments:

RECEIVED
Date & Time
Jan 30, 2018, 6:58 am

HB-1823

Submitted on: 1/30/2018 5:59:05 AM

Testimony for HHS on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons		Support	No

Comments:

LATE

HB-1823

Submitted on: 1/30/2018 9:34:30 AM
Testimony for HHS on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	HI Council of Assoc. of Apt. Owners a	Comments	No

Comments:

Hawaii Council of Association of Apt. Owners ("HCCA") supports the testimony of Richard Emery of Associa. We have heard from our membership about abuse of the reasonable accommodations policy that would allow for assistance animals in no-pets buildings and we believe it needs to be stopped due to complaints from other residents in those buildings. We believe that the steps need to be taken to mitigate the harmful and undesirable effects of allowing animals in no-pets condos.