

Harry Kim  
Mayor



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Managing Director

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Deputy Managing Director

County of Hawai'i  
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April 2, 2018

Representative Scott Y. Nishimoto, Chair  
Committee on Judiciary  
Hawai'i State Capitol, Room 325  
Honolulu, HI 96813

Representative Joy A. San Buenaventura, Vice-Chair  
Committee on Judiciary  
Hawai'i State Capitol, Room 325  
Honolulu, HI 96813

Dear Chair Nishimoto, Vice-Chair San Buenaventura, and Committee Members:

**Re: SB 2461, SD 1 Relating to Service Animals**  
**Hearing Date: 04/04/2018 – 2:00 pm; House Conference Room 325**

Thank you for this opportunity to testify in support of SB 2461, SD 1.

We have had a problem at County facilities where individuals have misrepresented animals as service animals. While SB 2461, SD 1 would not necessarily eliminate all abuses, it would be a positive way of reinforcing Hawai'i's commitment to the Americans with Disabilities Act, while creating a deterrent to those who would irresponsibly seek to unfairly take advantage of ADA's provisions.

While this bill would conform Hawai'i's definition of service animals to the ADA definition, there is nothing to preclude Hawai'i from recognizing the value of other support animals, and I understand that some State and local governments have laws that allow people to take emotional support animals, which are not service animals, into public places. We would not have any objection to an amendment to this bill which would allow counties to adopt more lenient ordinances if they saw fit to do so.

Respectfully submitted,

Wil Okabe  
Managing Director, County of Hawai'i



# Hawaii Fi-Do Service Dogs

*An Accredited Assistance Dogs International Program*

PO Box 757  
Kahuku, Hi 96731  
Phone: 808-638-0200  
[info@hawaiiifido.org](mailto:info@hawaiiifido.org)  
[www.hawaiiifido.org](http://www.hawaiiifido.org)

EIN # 99-0353345

April 2, 2018

The Honorable Representative Scott Y. Nishimoto  
Chairman, House Judiciary Committee  
Hawaii State Capitol, Room 421  
415 South Beretania Street  
Honolulu, HI 96813

RE: SB 2461 SD1

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Aloha Chairman Nishimoto!

I am writing on behalf of Hawaii Fi-Do Service Dogs in support of SB 2461 SD1. I am also writing to ask that you support this bill. *I want to express my sincere appreciation* for your having scheduled a House Judiciary hearing for this very important measure for this Wednesday, April 4, at 2:00PM. I will be there to present my support and to provide my views on the "enforcement" issues.

*The Americans with Disabilities Act (ADA) strictly intended to provide reasonable accommodations for those with real disabilities.* As I said when testifying before the Senate Judiciary Committee, *the growing gross abuse of the ADA is just not right!* It is so very wrong. That said, we do fully support the Senate's modifications of the bill to make an offense a misdemeanor, as opposed to the criminal offense originally proposed in the bill. We also support the lower fines.

We totally understand dog lovers wanting to have their pets with them as much as is possible. WE REALLY DO! We and handlers of service dogs love dogs just as much. But what they do not realize is that their abuse of the ADA laws on service dogs can have a very serious negative effect on legitimate service dog teams. More and more businesses just do not know who to believe anymore.

A legitimate service dog typically takes two or more years to train. Depending on what organization trained the dog and the degree of complex work tasks needing to be learned, the total expense in training and caring for the free dogs can run between \$20,000 and \$90,000. The real tragedy of the "fake service dog" problem is that the true working service dog teams really do not need the grief the "fake service dogs" can create. They already have enough challenges.



The biggest difficulty in getting any such bill ultimately passed involves the issue of enforceability. As the ADA expressly forbids anyone from requiring formal service dog IDs, the question is how does one prove a person is "faking" with his or her pet, wearing internet-purchased vests and IDs, as if it were a service dog? We understand and are fully empathetic to enforceability concerns, but this growing problem will go on forever, in limbo, if no action is finally taken.

So, do we just do nothing? No. We and many others believe that just having a law prohibiting these fake service dogs will have a meaningful impact on many of those who are doing the abuse, or contemplating it. We do not believe this position is naïve. Everyone agrees the best answer is through education. But while we and others have been trying for years ... still the fake service dog abuses grow. Why? We honestly believe in large part because it currently is technically not illegal to pass off a dog as a service dog when it is not. If it is not illegal, any appeal to stop the behavior becomes nothing more than a passionate plea.

I, and others, believe that if it was illegal, more people would definitely pay REAL attention, and many probably would reconsider this flagrant abuse of a service dog access law that was strictly intended to accommodate those with true disabilities. In my strong opinion, a law would be an important, critical "stake in the ground," and could be the beginning of a meaningful education program statewide. We at Fi-Do commit to do our part to help make that happen.

A great analogy was used by one fellow, Peter Fritz, who testified in favor. He said we should think of this like speed limit laws. I paraphrase: Without them there could be chaos, and even with them there certainly will be some violators, BUT we believe that the majority will obey simply because it IS law. Also, perhaps one can think of the law being a bit like the law that says "no smoking allowed on beaches." There has been no need for "cigarette police", there are still some abuses, but most have complied! These laws have been very effective!

It is important to note that at least 17 other states either have passed such a law or are in the process of doing so. They, too, recognize the enforceability issues. They all agree that just having a law on the books can be a real deterrent. Not perfect, but still effective, a good beginning,

On March 8<sup>th</sup>, there was a great Honolulu Star-Advertiser headline article on the "Fake Service Dogs" issue. We think they did a very good job covering the different points of view. It was very impressive that its unofficial reader survey afterward showed that 88% support this law!

Rep. Scott Nishimoto  
April 2, 2018  
Page 3

Again, Representative Nishimoto, I thank you very much for establishing this important hearing!  
I look forward to joining your House Judiciary Committee meeting on Wednesday!

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Kennedy". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

Jim Kennedy  
Executive Director  
Hawaii Fi-Do Service Dogs

[CCs to House Judiciary Committee Members via e-mail](#)



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**Derek Kurisu**, KTA Superstores, *Advisor*

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TO:  
Committee on Judiciary  
Rep. Scott Y. Nishimoto, Chair  
Rep. Joy A. San Buenaventura, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: Wednesday, April 4, 2018  
TIME: 2pm  
PLACE: Conference Room 325

RE: SB 2461 Relating to Service 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.

**SB-2461-SD-1**

Submitted on: 4/2/2018 3:48:26 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Support	No

Comments:

Fake service animals should not be tolerated.

**SB-2461-SD-1**

Submitted on: 4/2/2018 3:48:23 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Na Lan	Individual	Support	No

Comments:

D. Aragaka - Opposition

I am in strong opposition to SB2461, SD1. This will just lead to people with service animals being harassed. Please either do not hear this bill or hold the bill. Mahalo, D. Aragaka



L. Kau - Opposition

I AM IN STRONG OPPOSITION TO SB2461 BECAUSE IT WILL JUST LEAD TO PEOPLE WITH SERVICE ANIMALS BEING HARASSED. THANK YOU, L. Kau.

**SB-2461-SD-1**

Submitted on: 4/2/2018 6:17:59 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**SB-2461-SD-1**

Submitted on: 4/2/2018 6:55:15 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wendy Arbeit	Individual	Support	No

Comments:

I strongly support this bill because of the recent increase of people misrepresenting pets as service animals in buses and restaurants, and creating a nuisance as a result.

**SB-2461-SD-1**

Submitted on: 4/2/2018 9:53:07 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip Nerney	Individual	Support	No

Comments:

Fraud is an obvious and a pervasive problem with respect to "service animals." SB 2461 SD1 is a modest and reasonable measure with the worthy purpose of deterring fraud.

Respect for the legitimate use of a service animal is dramatically lessened by the cynical exploitation of law by pet owners. Legitimate use of a service animal should be honored. Fraudulent misuse of law should be sanctioned.

It is appropriate to recognize and to value the rights of persons to be free from risks of personal injury and unhygienic conditions. SB 2461 SD1 can serve as a meaningful tool to vindicate such rights in the public sphere.

Please pass SB 2461 SD1.

**SB-2461-SD-1**

Submitted on: 4/3/2018 9:29:12 AM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Individual	Support	No

Comments:

I believe that this is long over due. Too many people are abusing the law and this makes it difficult for people with disabilities. Please pass this bill.



**SB-2461-SD-1**

Submitted on: 4/3/2018 12:00:02 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
janet yocum	Individual	Support	Yes

Comments:

Aloha Honorable House Judiciary Committee members;

I urge you to support passing SB2461 SD1.

I will be at your Committee hearing meeting this Wednesday, but submit my testimony online for in support of this bill's passage.. I Thank Rep. Nishimoto for getting this bill scheduled this week as time is of the essence!

I am part of a Hawaii FiDO team. My service dog, Fiji, train every day. We are fortunate to be a part of the Hawaii FiDO family. With his assistance, I have been able to return to my full function in the community.

We train every day to make sure that when we are in the public, we behave to a very high standard to ensure our presence doesn't pose any risk to others, that our presence doesn't distract or advesely impact business operations,.

Service Dog access rights were created under the Americans with Disabilities Act for the express purpose to acoomodate those with legitimate disabilities...not to accomodate dog lovers "creating fake service dogs" so they can take their dogs wherever they go.

On sunday, we were at a restaurant where our waitress told a story about a patron who came in with a "vested dog" she claimed was a service dog. That dog bit another customer, who then required medical treatment. Monday, we were at a pizza restaurant and a stranger came up to us saying, "Now that is what a true service dog looks like" as he pointed under my bench where Fiji was laying down.

The public knows the difference between a "real" service dog and a "fake" service dog. Businesses know. They just need a little help from our legislators in defining protection and punishment for those who are irresponsible and bring their non-trained fake service dogs into public places.

# PETER L. FRITZ

TELEPHONE (SPRINT RELAY): (808) 568-0077

## HOUSE OF REPRESENTATIVES THE TWENTY-NINTH LEGISLATURE REGULAR SESSION OF 2018

### COMMITTEE ON JUDICIARY

Testimony on S.B. 2461 S.D. 1

Hearing: April 4, 2018

#### Relating To Service Animals

Chair Nishimoto, Vice Chair Buenaventura and members of the Committee. My name is Peter Fritz. I am an attorney and an individual with a disability. I am testifying today **in support** of S.B. 2461 S.D. 1.

This bill Establishes the offense of fraudulent representation of a service animal, changes the term service dog to service animal and amends the definition of that term to conform with the Americans with Disabilities Act.

I strongly support this bill which makes changes to the public accommodation provisions of Chapter 489, Hawaii Revised Statutes (“HRS”) that will make public accommodations safer for service animals and will provide uniform application of the service animal rules for public accommodations. Nineteen other states have enacted laws that make it unlawful for a person to misrepresent an animal as a service animal or otherwise fraudulently represent oneself as having a right to be accompanied by a service animal. These states are California, Colorado, Florida, Idaho, Kansas, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Texas, Utah, Virginia, and Washington. These states have apparently have decided that the problem of fraudulent representation outweighs the concerns of enforcement. Hawaii should do the same.

I support this bill for the following reasons:

- Increased Safety For Service Animals And Their Owners
  - A service animal is trained to do a specific task to assist an individual with a disability. A service animal can lose focus when charged or distracted by someone’s pet or untrained dog. If the service animal loses focus, it could lead is owner into a table or bump into a waiter causing injury to the owner or others.
  - A service animal trained to signal a change in blood sugar for a diabetic might fail to timely notify the owner and cause a hypoglycemic incident.
  - Just as speed limits keep some people from speeding, this law could cause some people to obey the law and not fraudulently represent that their animal is a service animal.
- Enforcement
  - Enforcement Guidelines can be found in the case of Lerma v. Cal. Exposition & State Fair Police (E.D. Cal., 2014). In this case, the Plaintiff Lerma was charged with violation of California’s code against fraudulent misrepresentation of a Service Animal, Cal. Penal Code § 365.7.

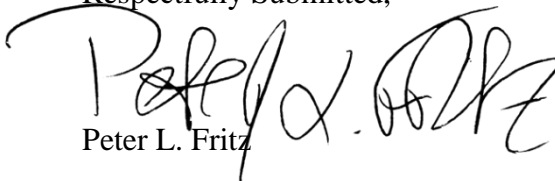
The Plaintiff filed a suit claiming that it was a violation of the Americans with Disabilities Act (ADA). The Court found that the officer did not violate the ADA.

- The Court discussed the officer's conduct in enforcing the law and found that it did not violate the ADA. The discussion provides guidance about how to enforce this law.
- Businesses Need Clear Consistent Laws And The Changes In This Bill Will Provide Consistency.
  - Conforming the definition of service animal in Hawaii's public accommodation law, Chapter 489, HRS to the ADA's provides the conformity that businesses need to comply with Title III of the ADA.
  - The Hawaii Civil Rights Commission ("HCRC") had taken the position that emotional support animals should be treated as service animals and are entitled to accompany their owners to all areas of public accommodation. The health code only permitted service animals as defined by the ADA.
  - The conflict between the ADA, the HCRC's position on emotional support animals and the health code forced a local food business to file a declaratory judgment to resolve this conflict .
  - As a result of the declaratory judgement, the HCRC will defer to the health code which only allows service animals in certain areas of a public accommodation.
  - However, this creates a problem for businesses. Under the HCRC's revised position, emotional support animals will be allowed in areas of a public accommodation where food is not prepared, but not in areas where food is prepared. Emotional support animals would be excluded in areas at restaurants where food is prepared at the table but permitted at other restaurants. Emotional support animals would be allowed in all other areas of a public accommodation where food is not prepared. This is confusing to the public and to businesses.
  - Amending Chapter 489 to apply the same definition as the ADA's will resolve conflicts. It promotes uniformity.

I respectfully ask that this Committee passed this bill.

Thank you for the opportunity to testify.

Respectfully Submitted,

  
Peter L. Fritz

**SB-2461-SD-1**

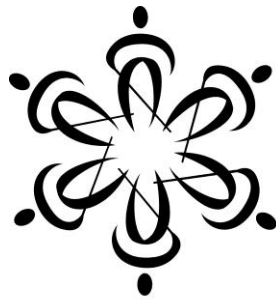
Submitted on: 4/3/2018 12:59:33 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

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

Comments:

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.



NATIONAL FEDERATION  
OF THE BLIND  
HAWAII

*Live the life you want.*

COMMITTEE ON JUDICIARY  
Rep. Scott Y. Nishimoto, Chair  
Rep. Joy A. San Buenaventura, Vice Chair

DATE: Wednesday, April 4, 2018  
TIME: 2 p.m.  
PLACE: Conference Room 325  
Hawaii State Capitol

Re: Comments on Senate Bill 2461

To Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

Mahalo for taking up such an important yet complicated issue affecting everyone, including the blind.

We absolutely agree that it is wrong and problematic for people to misrepresent pets and other animals as service animals when they are not. It has become far too easy to abuse protections for service animals.

We further agree that it is a good idea to come up with a deterrent, thus reducing the frequency with which people abuse the protections intended for real service animals.

Some blind people use service animals. It seems that most people misrepresenting a service animal are not claiming to be blind people using a service animal for mobility; it is more often some kind of claim that the animal provides emotional support. Nonetheless, if our society evolves to be skeptical of service animals overall because of those who abuse the system, that culture against service animals affects us in a negative way. Blind people, and anyone else, using service animals should be expected to keep their animals well-behaved and well-groomed. We should not impose any special burden on society.

We believe that this kind of law would be extremely difficult to enforce. We do not want the enforcement of this law to reach a point where blind people are required to carry identification proving the validity of our service animals. Here in Hawaii, those of us who are relatively competent travelers are frequently accused of faking blindness. We believe that we should have the right to function without justifying our disability.

In summary, we support the intent of the bill and the creation of a deterrent to abusing the system but wish to point out that it is difficult to enforce.

Mahalo for the opportunity to submit testimony.

Justin Salisbury, MA, NOMC, NCRTB, NCUEB  
Legislative Committee Chair  
Honolulu Chapter  
National Federation of the Blind of Hawaii



Dara Fukuhara  
98-1951 A Kaahumanu Street  
Aiea, Hawaii 96701

**LATE**

Tuesday, April 3, 2018

The Honorable Representative Scott Y. Nishimoto  
Chairman, House Judiciary Committee  
Hawaii State Capitol, Room 421  
415 South Beretania Street  
Honolulu, HI 96813

RE: SB 2461 SD1

Aloha Chairman Nishimoto!

I am writing in support of SB 2461 SD1. **The Americans with Disabilities Act (ADA) strictly intended to provide reasonable accommodations for those with real disabilities**. The ADA protects those with disabilities who have legitimate service dogs but there are those who are abusing this law because there's no enforcement or penalties for those who are passing off their pets as service animals. I fully support the Senate's modifications of the bill to make an offense a misdemeanor, as opposed to the criminal offense originally proposed in the bill. I also support the lower fines.

As someone who is involved with a service dog organization, a legitimate service dog typically takes two or more years to train. Depending on what organization trained the dog and the degree of complex work tasks needing to be learned, the total expense in training and caring for the free dogs can run between \$20,000 and \$90,000. The real tragedy of the "fake service dog" problem is that it affects true working service dog teams, which can cause serious repercussions if a "fake service dog" becomes aggressive or defecates in the business.

While we and others have been trying for years to educate the public about fake service dogs ... still the fake service dog abuses grow. Why? We honestly believe in large part because it currently is technically not illegal to pass off a dog as a service dog when it is not. If it is not illegal, any appeal to stop the behavior becomes nothing more than a passionate plea.

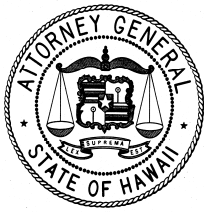
I, and others, believe that if it was a penalty, more people would definitely pay REAL attention, and many probably would reconsider this flagrant abuse of a service dog access law that was strictly intended to accommodate those with true disabilities. In my strong opinion, a law would be an important, critical "stake in the ground," and could be the beginning of a meaningful education program statewide.

Please support the passage of this bill.

Best regards,



Dara Fukuhara  
Hawaii Fi-Do Service Dogs Board President



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2461, S.D. 1, RELATING TO SERVICE ANIMALS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Wednesday, April 4, 2018

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Russell A. Suzuki, Attorney General, or  
Adrian Dhakhwa, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill, but has concerns.

The purpose of this bill is to make it illegal to misrepresent an animal as a service animal; change the term "service dog" to "service animal"; have references to "service animal" conform with the Americans with Disabilities Act of 1990; and amend the criminal offenses of causing injury or death to a service dog or law enforcement animal, in violation of section 711-1109.4, Hawaii Revised Statutes (HRS), and intentional interference with the use of a service dog or law enforcement animal, in violation of section 711-1109.5, HRS, to apply to service animals instead of just service dogs.

The Department is concerned that it will be difficult, if not impossible to enforce this offense, even as a noncriminalized offense. The offense prohibits a person, not necessarily the owner, from knowingly misrepresenting as a service animal, any animal that is not a service animal, as defined in section 347-2.5, HRS, as amended. The proposed section 347-2.5 provides:

As used in this chapter, "service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

The misrepresentation could be made by anyone, not just the owner of the animal. And the misrepresentation could be made in any context, even when it made no difference

whether or not the animal was or was not a service animal. A paid dog walker walking a dog, wearing a vest, down the street, and responding to a pedestrian who asks about the dog, that the dog is a service animal, commits the offense if the dog is actually not a service animal. The proposed offense would apply to this scenario.

The proposed offense may be difficult to enforce because of the difficulty in determining whether or not an animal is a service animal, and in proving in court, beyond a reasonable doubt, that an animal is not a service animal. An investigator would have to prove that the animal was not trained to perform tasks to benefit an individual with a disability. An investigator's ability to investigate such an offense is limited by the Americans with Disabilities Act (ADA), which prohibits the following: (1) asking about the nature or extent of the owner's disability; (2) requiring proof that the animal has been certified, trained, or licensed as a service animal (28 C.F.R. 35.136(f)); (3) requiring the animal to wear an identifying vest or tag; and (4) asking the animal to demonstrate its ability to perform the task or work. Moreover, the ADA does not require service animals to be professionally trained. So if the owner says he or she is training the animal personally, there is no way to prove otherwise. Finally, documentation that an animal is in fact, a service animal, has been deemed unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA.

Thank you for the opportunity to provide these comments.



# HAWAI'I CIVIL RIGHTS COMMISSION

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

**LATE**

April 4, 2018  
Rm. 225, 2 p.m.

To: The Honorable Scott Y. Nishimoto, Chair  
Members of the House Committee on Judiciary

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

## S.B. No. 2461, S.D.1

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 S.B. No. 2461, S.D.1, is to "... Establish a civil penalty for fraudulently representing a dog as a service animal;" and to "Establish a definition of service animal that ... conforms with the Americans with Disabilities Act of 1990..."

S.B. No. 2461, S.D.1, if enacted, would amend H.R.S. chapter 347 to establish a new civil penalty for "Misrepresentation of a service animal." The penalty for a violation would be a fine of not less than \$100 and not more than \$250 for a first offense, and not less than \$500 for any subsequent offense.

S.B. No. 2461, S.D.1, would also amend HRS Chapter 347 to add a definition of "service animal."

**The HCRC opposes S.B. No. 2461, S.D.1, because it is premised on erroneous findings, is fundamentally flawed, and conflicts with federal and state fair housing law, and would have a cruel and chilling effect on the exercise of rights by persons with disabilities under the federal Fair Housing Act and state fair housing law (HRS Chapter 515), as well as under the Americans with Disabilities Act (ADA).**

Section 1 of S.B. No. 2461, S.D.1, at page 2, includes these findings:

The legislature additionally finds that a penalty for misrepresentation of a dog or other animal as a service animal would discourage people from fraudulently representing their pets in order to bring the animals into restaurants, supermarkets, and other inappropriate locations.

**The legislature also finds that statutory penalties will also discourage persons from fraudulently misrepresenting a pet animal in order to gain housing amenities which, but for otherwise lawful restrictions on pet ownership, would not be available to residents of a dwelling or building.** The legislature finds that such penalties are not inconsistent with the spirit of the ADA.

These findings are erroneous, because they reflect a misunderstanding of federal and state fair housing laws regarding the use of assistance animals as a reasonable accommodation for a person with a disability in housing. Simply put, a person with a disability has the right to request a reasonable accommodation that is not limited to the use of a service animal (trained to do work or perform tasks for a person with a disability), but may more broadly request the use of an assistance animal (that works, assists, provides emotional support, or performs tasks for a person with a disability). The use of an assistance animal as a reasonable accommodation is not provided or governed by the ADA, as erroneously stated in the findings, but is required under the federal Fair Housing Act, and the state fair housing law, H.R.S. chapter 515. The import of these distinctions is fully explained in the Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) Notice: FHEO-2013-01, on “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs,” issued on April 25, 2013. (Attached). It should be noted that state fair housing laws are required, at minimum, to be substantially equivalent to the federal Fair Housing Act.

Any contemplated application of the proposed new law to assistance animals in the housing context would not be legal, in that the title of S.B. No. 2461, S.D.1. “RELATING TO SERVICE ANIMALS,” is too narrow. Under state and federal law, every service animal is an assistance animal, but not every assistance animal is a service animal.

And, perhaps most importantly, the substantial monetary civil penalties imposed under S.B. No.



2461, S.D.1, are meant to have a chilling effect on the exercise of rights by a vulnerable minority, persons with disabilities. The threat of legal sanctions and levies will be used against and strike fear in persons who have mental and psychological disabilities, who may not know the difference between an assistance animal and a service animal, and may represent one as another.

### **Background Information: Assistance Animals as Reasonable Accommodations in Housing**

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 (USDOJ).

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 (“assistance animal” includes service animals) 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 who has a physical or mental impairment which substantially limits one or more major life activities is a person with a disability who can request the use of an assistance animal as reasonable accommodation.

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.

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 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.

This is substantially different from the limited inquiries allowed under the ADA, discussed below.

### **Background Information: Definition of “Service Animal”**

Under federal law protecting the rights of persons with disabilities to access government services and public accommodations, the Americans with Disabilities Act (ADA), Title II (state and local government services) and Title III (public accommodations), the USDOJ has defined “service animals” as dogs (and miniature horses) that are individually trained to do work or perform tasks for persons with disabilities. The ADA Title II and Title III definition of service animals expressly excludes comfort or support animals (that are not trained to perform tasks).

There is no federal or Hawai‘i state law that provides for or requires certification of service animals, and no government agency that provides such certification. Under the ADA Title II and Title III, any animal that is individually trained to perform a task for a person with a disability is a service animal as legally defined.

### **Discussion**

**1) Penalizing the “misrepresentation of a service animal” will have a chilling effect on the exercise of rights under both federal and state fair housing law.**

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. The USDOJ and the U.S. Department of Housing and Urban Development (HUD) have issued a joint statement that the ADA Title II and Title III service animal definition of “service animal” does not apply to or affect the rights of persons with disabilities to have the use of an assistance animal as a reasonable accommodation under the federal Fair Housing Act. See also state law at H.A.R. § 12-46-306. 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. Penalizing the “misrepresentation of a service animal” will invite housing providers to threaten retaliation against residents who dare to request the use of a service animal as a reasonable accommodation, providing a weapon for coercion and intimidation of those our fair housing laws are meant to protect.

**2) The creation of a civil penalty for a false representation will encourage inquiries that are unlawful under federal law.**

Under Title II and Title III of the ADA, when an individual with a service animal comes to a government office or a business with a service animal, if the individual’s disability and the service the animal provides is not obvious, *only* two limited inquiries are allowed by law: 1) whether the dog is a service animal required because of a disability; and, 2) what work or task the dog has been trained to perform. Pursuant to U.S. Department of Justice guidance, no other inquiry or request for documentation or proof is allowed.

State law should not be amended to encourage unlawful inquiries of persons who attempt to access government offices or businesses accompanied by a service animal, as is their right under the ADA, whether those inquiries are made by staff, agents, or third party proxies.

## **Conclusion**

This bill proposes to penalize “misrepresentation of a service 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, as well as encourage inquiries that are unlawful under the federal ADA.

The limited scope of the right to use a service animal under Title II and Title III of the ADA does not apply to or limit the right to request the use of an assistance animal as a reasonable accommodation under federal and state fair housing law, federal ADA Title I (employment) and state fair employment law, or state public accommodations law.

The bill proposes to criminalize the knowing false representations of a dog as a service dog. 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 laws other than Title II and Title

III. It will also potentially criminalize persons with disabilities who mistakenly characterize their assistance animals as service animals.

The HCRC opposes S.B. No. 2461, S.D.1.







U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

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**SPECIAL ATTENTION OF:**

HUD Regional and Field Office Directors  
of Public and Indian Housing (PIH); Housing;  
Community Planning and Development (CPD), Fair  
Housing and Equal Opportunity; and Regional Counsel;  
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**  
Issued: April 25, 2013  
Expires: Effective until  
Amended, Superseded, or  
Rescinded

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Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations<sup>1</sup> for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA<sup>2</sup>.

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<sup>1</sup> Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

<sup>2</sup> Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities<sup>3</sup> with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

### **Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504**

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals<sup>4</sup> in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.<sup>5</sup> While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

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<sup>3</sup> Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

<sup>4</sup> Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

<sup>5</sup> For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.<sup>6</sup>

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

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<sup>6</sup> A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.<sup>7</sup>

## **Section II: The ADA Definition of "Service Animal"**

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."<sup>8</sup> Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses<sup>9</sup>), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

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<sup>7</sup> Ibid.

<sup>8</sup> 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

<sup>9</sup> 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.<sup>10</sup> A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.<sup>11</sup>

### **Section III. Applying Multiple Laws**

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."<sup>12</sup>

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<sup>10</sup> 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

<sup>11</sup> For more information on ADA requirements relating to service animals, visit DOJ's website at [www.ada.gov](http://www.ada.gov).

<sup>12</sup> 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”<sup>13</sup> In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”<sup>14</sup> While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.<sup>15</sup>

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

#### **Section IV. Conclusion**

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

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<sup>13</sup> 75 Fed. Reg. at 56194, 56268.

<sup>14</sup> 75 Fed. Reg. at 56166, 56240.

<sup>15</sup> 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.

A handwritten signature in black ink, appearing to read "John Trasviña". The signature is written in a cursive style with a large initial "J".

---

John Trasviña, Assistant Secretary for  
Fair Housing and Equal Opportunity



## 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

April 4, 2018

**LATE**

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Senate Bill 2461, SD1 Relating to Service Animals

The Disability and Communication Access Board (DCAB), supports the intent of Senate Bill 2461, SD1 to provide greater enforcement on the proliferation of 'fake' service and emotional support animals, has some concerns regarding this bill.

With respect to Section 2, our primary question relates to the enforcement of such a law. 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? To whom would a complaint be filed and would it be realistically pursued?

With respect to Sections 3 to 11, we concur with all the proposed language changes to conform (and clarify) the definition in Hawaii Revised Statutes of service animal to the definition in the Federal Americans with Disabilities Act.

We also bring to your attention Senate Concurrent Resolution 28 which asks for a Working Group to be established to examine this issue and we support that resolution. We also support efforts for a national registry, although this must be initiated at the federal level with consistent standards and policies.

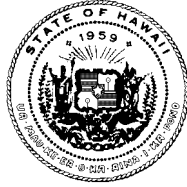
Thank you for the opportunity to provide testimony.

Respectfully submitted,

FRANCINE WAI  
Executive Director



DAVID Y. IGE  
GOVERNOR



**LATE**

PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

April 4, 2018

TO: The Honorable Representative Scott Y. Nishimoto, Chair  
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2461 SD1 – RELATING TO SERVICE ANIMALS**

Hearing: Wednesday, April 4, 2018 at 2:00 p.m.  
Conference Room 325, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) understands the intent of the measure and provides comments. DHS acknowledges the encouragement of the Senate Committee on the Judiciary to review this measure. (See STAND. COM. REP. NO. 2547). DHS does not have the expertise or ability to certify whether an animal is sufficiently trained to be a service animal, nor does it have investigative capabilities to determine where a violation of the proposed measure's provisions have occurred.

DHS is aware of problems faced by individuals with disabilities who encounter untrained animals and their owners who misrepresent their pet as a service animal, as well as those encounters with businesses that fail to accommodate an individual with disabilities because of their service animal.

DHS acknowledges the prior testimony and the conundrum regarding compliance with the Americans with Disabilities Act (ADA) and the desire and need to somehow regulate, certify, and penalize the bad actors. DHS encourages the legislature to convene a work group and to consider consultation with an ADA specialist of the U.S. Department of Justice; DHS will certainly participate.

DHS further encourages increased public education regarding how to facilitate the proper use of service animals so that businesses properly accommodate individuals with disabilities, and support for persons with disabilities to obtain sufficiently trained service animals. DHS is not aware of any local agency or existing program that offers financial assistance to individuals with disabilities to obtain trained service animals.

**PURPOSE:** The purpose of the bill establishes civil penalties for misrepresentation of a service animal. Changes the term "service dog" to "service animal" and amends the definition of that term to conform with the Americans with Disabilities Act of 1990. Effective 1/1/2035. (SD1)

Thank you for the opportunity to provide testimony on this measure.

**LATE**

**SB-2461-SD-1**

Submitted on: 4/4/2018 11:20:21 AM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brandon	Individual	Support	No

Comments:

Please consider the following

Amending Section 2 of the bill to not only fine people who lie about a service animal but also add mandatory community service. For the first offence, a minimum of 20 hours should be performed. Every offence thereafter should add on another 5 hours of mandatory service. In addition, 50% of the community service hours should be done for a non-profit organization that works with service animals as defined by the current bill. The remaining 50% of the hours should be spent performing education to the public about service animals.

Section 9 of the bill that amends Section 711-1109.4, HRS, Subsection B, should be changed from "The person is the owner of a *dog* and recklessly permits *that dog* to attack a service animal..." to "The person is the owner of a *animal* and recklessly permits *it* to attack a service animal..."

**LATE**

**SB-2461-SD-1**

Submitted on: 4/4/2018 5:02:12 PM

Testimony for JUD on 4/4/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:



**LATE**

Aloha Rep. Nishimoto,

My name is David Oneha. I am a Physically Disabled individual, and an staunch advocate for the Disabled, and believe in the protection of the A.D.A. On March 8th, Senate Bill 2461, regarding penalties and the legalities of person's with Fake Service Animals was referred to the House Judiciary Committee, that you Chair. I'm emailing you, to appeal to you to put this Bill on the agenda, and to have it be discussed in Committee.

I am in full support of this measure. Although, some have raised concerns about this Bill impeding on the privacy of the Disabled Individual, this Bill is imperative. In recent years, there has been a higher influx of people portraying their Non Certified Service Animals, as a Certified Service Animals in public venues like the Malls and The Bus. This a detriment to Real Certified Service Animals and to Persons with Disabilities. A negative reaction from a Uncertified Animal and erase and mar the months of rigorous training a Certified Animal goes through.

For you to consider my case, I would like to share two personal incidents that happened to me with you. First, one day at Kahala Mall, I was observing a Beautiful Great Dane, and his Young Adult Male Owner in the outside sitting area. I was just about to comment to the young man, how well behaved his dog is, and inquire where he got his dog trained and certified. Before I could say anything, another couple interjected with a large Poodle and inquired where he got his dog trained and Certified. To which the male replied, " You can just order the vest online! Plus, Mall Security cannot ask you any questions anyway! Which is a false statement and a misnomer. " I was so disheartened to hear this carefree response. Many Physically Disabled Individuals strive for Equality and Equity in traversing independently and freely in all public arenas. With no kind of counter measure, a Fake Service Animals has more physical access to areas because it can climb stairs, curbs, and does not need to worry if there are Accessible Restrooms on site! With recent attempts on the National level, the Current Congress is planning to gut the A.D.A., and turn the burden of proof from the Business Owner, to the Disabled Individual. Many Disabled Individuals are recipients of Social Security and cannot afford legal representation to fight their Discrimination cases. Where is the Equality and justice here?

The other personal situation I share with you is an incident that I recently went through on the Bus. My wheelchair and I was tied down in front, right side of the bus, and two individuals with their own dogs (possibly strays) boarded the Bus. These individuals, sat adjacent to me. None of these dogs had a vest to distinguish Certification and were loosely leashed. One of these dogs was a Pitbull mix and other a smaller type of dog. As the Bus ride continued, and the dogs got closer to one another, a brawl between the dogs ensued. I was feared that I would be bitten by one of these dogs. The owner hit the Pitbull mix with its leash and pulled on the leash for the dog to stop. These are all characteristics to show that these are not Trained, Certified Service Animals! In my pursuit to one day have my own Service Dog, I have studied what it entails.

My whole point is this! Many people with Disabilities cannot fake their Disabilities. Many live their reality on a constant basis through the physical pain they face, the adverse side effects to their



medication, and the depression from the marginalization and isolation they face. I feel if we don't address this measure now, and this growing epidemic of more people testing the boundaries with their Fake Service Animal, the disparity level of understanding the Disabled Individuals' plight will widen. I strongly believe this is a Morality issue, and by having penalties imposed and making Fake Service Animals illegal, it may spawn guilt and ride on the consciousness of an individual, not to do so!!

I humbly ask for your personal consideration on this matter and ask that you schedule this in Committee!!!

Mahalo nui loa,  
David Oneha