

SB334

Measure Title: RELATING TO ASSISTANCE ANIMALS.
Report Title: Deaf and Blind Task Force; Assistance Animals;
Reasonable Accommodation Verification
Description: Codifies the administrative rule definition of
"assistance animal". Clarifies the type of verification
of a reasonable accommodation request for an
assistance animal that the individual may provide.
Companion:
Package: Deaf and Blind Task Force
Current CPH, JDC
Referral:
Introducer(s): K. RHOADS, Harimoto



HAWAI‘I CIVIL RIGHTS COMMISSION

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January 30, 2019
Rm. 229, 9:00 a.m.

To: The Honorable Rosalyn H. Baker, Chair
Members of the Senate Committee on Commerce, Consumer Protection, and Health

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

Re: S.B. No. 334

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 (on the basis of disability). 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 state fair housing law, HRS chapter 515, is enforced by the HCRC. The HCRC has a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) for HCRC investigation of complaints that are dual filed under state law and the federal Fair Housing Act (FHA).

If enacted, H.B. No. 334 would amend HRS § 515-2 to add a definition of “assistance animal,” and amend HRS § 515-3 to require that verification of a disability to establish the disability-related need for an assistance animal be issued in writing by a “health care professional, mental health professional, social worker, or rehabilitation counselor *who has personally evaluated* the person.”

The HCRC opposes S.B. No. 334 as written, because the proposed requirement that written verification of disability be based on “personal evaluat[ion]” is not a requirement under the federal FHA,

raising the risk that it could affect our HUD certification of substantial equivalence between state fair housing law and the FHA, and create potential jeopardy of de-certification and loss of the HCRC's HUD contract.

New definition of “assistance animal”

Section 2 of the bill amends HRS § 515-2 to add a new definition of “assistance animal”:

"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, and may include species other than dogs.

This statutory codification is identical to the definition of “assistance animal” provided in the HCRC's rules, at HAR § 12-46-302. Accordingly, the HCRC has no disagreement with the definition, but notes that statutory codification is not necessary, as the administrative rule has the force and effect of law.

“Personally evaluated” requirement

Section 3 of the bill amends HRS § 515-3(9) to require verification of a disability to establish the disability-related need for an assistance animal be issued in writing by a “health care professional, mental health professional, social worker, or rehabilitation counselor *who has personally evaluated* the person.”

This raises two concerns:

“Personally evaluated” is not defined, and it is not clear whether this requires in-person evaluation, or excludes verification based on remote, web-based, or record-based consultation. The purpose section should clarify what kind of written verification is meant to be excluded, and “personally evaluated” should be defined to expressly include evaluations via telephone, online video conference or other remote communication, based on written record review, and also to allow for verification by out-of-state health care professionals, mental health professionals, social workers, or rehabilitation counselors.

And, **the new requirement of “personal evaluat[ion]” is not a requirement under the federal FHA.**

Under the FHA, HUD funds state and local agencies that administer fair housing laws that HUD has determined to be substantially equivalent to the federal Fair Housing Act. A state or local agency may be certified as substantially equivalent after HUD determines that the agency administers a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the FHA. Once certified, HUD will refer complaints of housing discrimination that it receives to the state or local agency for investigation. Our state fair housing law, HRS chapter 515, has been certified by HUD to be substantially equivalent to the FHA. Statutory changes that affect rights could jeopardize HUD certification of HCRC substantial equivalence and HUD’s cooperative agreement with the HCRC.

The HCRC opposes S.B. No. 334 as written. The HCRC suggests that its concerns can be addressed by deletion of the words, “*who has personally evaluated the person.*” from the amendment to HRS § 515-3(9).

Thank you for your consideration.



DISABILITY AND COMMUNICATION ACCESS BOARD

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LATE

January 30, 2019

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

RE: Senate Bill 334 Relating to Assistance Animals

The Disability and Communication Access Board (DCAB) offers comments on Senate Bill 334 Relating to Assistance Animals, specifically animals defined as assistance animals for persons with disabilities in the context of housing.

The first change in the bill is to add a definition of “assistance animal” to the housing statute under the jurisdiction of the Hawaii Civil Rights Commission (HCRC). This is consistent with the U.S. Department of Housing and Urban Development (HUD) and the definition already present in the HCRC rules.

The second change is to clarify who will verify a person’s disability and the need for an assistance animal. We raise the issue that the requirement for a “health care professional, mental health professional, social worker, or rehabilitation counselor who has personally evaluated” the person with a disability is vague. What does “personally evaluated” mean? We understand that the HCRC has a workshare agreement with HUD and that state and federal laws must be substantially equivalent for HCRC to enforce the law. Thus, we defer to the Hawaii Civil Rights Commission regarding this legal technicality.

Thank you for this opportunity to offer comments.

Sincerely,

Francine Wai
Executive Director

SB-334

Submitted on: 1/27/2019 8:55:24 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darlene Ewan	Testifying for Aloha State Association of the Deaf	Support	No

Comments:

SB-334

Submitted on: 1/25/2019 10:56:31 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Carl Oguss	Testifying for Hawaii Dog Psychology Center	Support	No

Comments:

Aloha!

As a psychologist who has been working with service and therapy dogs since 1974 and who has received international recognition for his work with dogs by print and TV media, I have a few suggestions for edits to S.B. NO. 334 which might improve its clarity and usefulness.:

1. Omit the term “is needed” from pages 2, 3, and 6 where it is used to describe the assistance animal’s role in the life of the disabled person. Medical professionals do not think of specific methods of reducing the impact of a disability as specifically being needed; instead, they think of a recommended method as being one of several options. Therefore, when they prescribe a cane for a person with a leg injury, it is not because that person needs a cane per se; a crutch or a wheelchair might also serve the same purpose of reducing the impact of the disability. When a pain reducing medication is needed, the doctor does not make the claim that the particular medication being prescribed is uniquely “needed” by the patient; they merely are stating that it is an appropriate choice for the pain reduction of this particular patient. Service dogs are being used for many purposes that other means had been used in the past and perhaps are still being used, and the number of new uses for service dogs grows every year. Therefore, medical professionals strongly prefer to recommend that a service dog might be helpful for a specific patient, rather than going on the record to claim that the patient “needs” a service dog. What the medical professional states in the letter prescribing the use of a service dog is that a service dog is being recommended because service dogs have been found to be able to help patients with the disability the patient in question has. Doctors and therapists are loath to claim too much in the writing of service dog letters, and if your new law requires that they claim that a service dog in particular “is needed”, it will ask them to claim more than is true in most cases and is likely to result in many medical professionals being unwilling to write the required letters.
2. Page 2 of the bill says that the bill is responsive to the concern of housing professionals who worry that the letter being required by a person’s doctor or therapist might come from a health professional who is not within the State of Hawaii and/or who is not actually treating the person possessing the letter. I

recommend that letters written by doctors and therapists outside of Hawaii be honored fully so long as they were written within the past 12 months prior to their use to receive a housing accommodation. "Snowbirds", tourists, and new arrivals in Hawaii all have the same rights under Federal law as longtime residents do. However, it would be reasonable to require that anyone who is intending to remain in Hawaii have their accommodation letter written by a medical professional who is licensed in Hawaii after the first 12 months of residence. You get the wording exactly right on page 6 where you say that the medical professional is someone "who has personally evaluated the person" rather than "is treating" the person, because not every relevant disability is able to be "treated".

3. On page 5 and 6 you say, "provided that if reasonable accommodations include the use of an assistance animal, reasonable restrictions may be imposed"; this is far too vague to be properly interpreted by real estate professionals or assistance animal users, and it is open to wildly differing interpretations depending upon what each individual considers "reasonable". Therefore, you need to spell out the exact kind of restrictions which may be imposed to avoid unnecessary and unintended conflicts. There are many variables to consider such as species, breed, size, type of work or task performed, etc., to name a few. I can offer you assistance in this effort, if you like; you can contact me via the information provided below.
4. On page 3 it says, "Assistance animals may include but are not limited to service animals, therapy animals, comfort animals, or emotional support animals." Therapy animals are not properly included in either the ADA, the ACAA, or the Federal housing laws governing the use of assistance animals and they are not granted any special rights or privileges thereunder. This is because a "therapy animal" is one who is used to give comfort and pleasant distraction to another person (i.e., not the handler of the dog) in settings such as hospitals, elder residence facilities, and schools. There is also a category of animal called a "therapy assistance animal" who actually takes part in the therapeutic treatment of people with disabilities to help them improve their condition; they are also handled and owned by someone who is not the disabled person. Service and comfort dogs help disabled people to lead fuller richer lives, but there is no expectation by the medical community that they will have any "therapeutic" effect, any more than a cane or pain medication does. Therefore, none of the proper uses of "therapy animal" are relevant to this bill's goals and subject matter.
5. Finally, in my many decades of experience working with medical professionals and with service dog users I have often guided medical professionals in their drafting of appropriate letters for the use of service and comfort dogs. Based on that experience and on my careful reading of the relevant laws I suggest the following in addition to the comments made in #2 above:
 1. The letter should be current, written within the past 12 months preceding use and therefore renewed annually to differentiate between those persons having a longterm disability and those persons having one of short duration who do not need and ought not to request accommodations of this kind.

2. The letter should be on the official letterhead of the medical professional writing it or should state the full contact information of the professional, including their mailing address, phone number, email address (if one is used professionally), and fax number (if one is used). This will allow the real estate professional to contact the medical professional to authenticate the letter, if desired.
3. The letter should state the license type of the medical professional writing it, as well as the last date that the license was renewed.
4. The letter should state that the disabled person “has a disability that is recognized by the DSM-5 or is physical in nature”, but it should not state the specific diagnosis.
5. The letter should state that the use of a service dog is recommended by the medical professional for the disabled person to assist them with their disability, but it should not name a specific dog or claim that the medical professional has in any manner evaluated the usefulness of a specific dog for this purpose.
6. The letter must be signed above the printed name of the medical professional.

I have lived in Hawaii full-time since 2003 and resided here during the winter season for many years before that. In the 15 years during which I have been a full-time resident, I have probably trained more service and therapy dogs, and very likely more pet dogs, than any other local trainer. My work has been the subject of TV stories in the US and the EU, and has been covered in over 80 publications in 30 countries, including the front page of the International and National Wall Street Journal in which it was the “editor’s pick” and the most watched video for a full week. I have provided over 1500 hours of pro bono teaching to the local dog community here in Hilo, Hawaii, and I hope my suggestions for your fine bill will be of some assistance. Please contact me if you have any questions or need additional input.

Dr. Carl F. Oguss

Hawaii Dog Psychology Center

808-933-9763

easthawaiidogpsychologycenter@yahoo.com

SB-334

Submitted on: 1/26/2019 2:38:47 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Oppose	Yes

Comments:

The fraudulent use of assistance animals is a growing problem in Hawaii. Simply look at recent news with the emotional support alligator. Or the chickens. Or the geckos. Or the pig. Or the turkey. And the list goes on. I support the legitimate needs of disabled, but the proposed Bill does not do anything to prevent abuse, especially online certifications.

SB-334

Submitted on: 1/28/2019 11:04:07 AM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	Testifying for Community Associations Institute LAC	Oppose	No

Comments:

Reasonable accomodation for assistance animals have been subject to a lot of abuse and it has been known that anyone can pay a small amount online to purchase the alleged "verification" for assistance animals. We recommend further consideration and scrutiny on the definition and verification process. The proposed amendment language is likely not going to address such concerns in real life where diabled people who are in actual need of such accomodation are neglectly impacted along with associations and landlords who have to constantly wrestle with abusers of such privileges.



LATE

January 27, 2019

Commentary and proposed amendments for SB 334

Senator Baker and Members of the Senate Committee on Commerce, Consumer Protection and Health:

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 offer commentary on SB 334.

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.

While SB 334 attempts to codify Act 217, the bill still places the burden of determining whether an animal is a legitimate assistance animal to businesses.

On page 6, lines 2 to 8:

provided further that any verification provided by a person with a disability to establish the disability related need for an assistance animal as a reasonable accommodation shall have **been issued in writing by a health care professional, mental health professional, social worker, or rehabilitation counselor who has personally evaluated the person;**

I offer for consideration an amendment to this section that would include penalties for the issuing clinician for assisting in this "misrepresentation of an assistance animal".

As a licensed health care professional in the State of Hawaii (LSW, licensed social worker), I feel penalties for the issuing clinician would cut down on abuse of the law. I have been approached on more than one occasion to provide this type of verification. I

have declined because I felt the motivation for seeking this “assistance animal” designation was for reasons other than the intent of this act. Also my LSW license differs from an LCSW (licensed clinical social work) who is qualified to evaluate the behavioral health status of an individual.

When providing a verification of need of an assistance animal, I ask you to consider requiring the license number and the State the license was issued in to be on the letter. This would allow for any landlord/rental agent to easily check if the clinician holds a valid license and meets the requirements.

We believe that HUD has adequately addressed the “test” that housing providers are legally allowed to use in their publication:

https://archives.hud.gov/news/2013/servanimals_ntcfheo2013-01.pdf

Thank you again for this opportunity to testify. We respectfully request that you consider the offered amendments and comments regarding SB 334.

Lynn Muramaru, LSW,CCM
Board Member
Pacific Pet Alliance

SB-334

Submitted on: 1/25/2019 4:14:55 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Oppose	No

Comments:

SB-334

Submitted on: 1/26/2019 2:18:34 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Oppose	No

Comments:

SB 334 will not achieve its stated goal. Requests for "assistance animals" are frequently fraudulent, and strong deterrents to fraudulent "reasonable accommodation" requests are needed. The most cursory Internet search will yield on-line fee-based resources that will provide meaningless personal evaluations over the phone or otherwise.

See, for example, <https://www.myesadoctor.com/>, which advertises: "Get your emotional support animal letter online in 10 minutes. An official letter from our licensed physicians allow you to live and fly with your pet legally & hassle free. Pay \$59 for any one letter (housing/travel) or get the 2 -n-1 recommendation for just \$79."

Much different language than appears in SB 334 is needed to deter fraud.

SB-334

Submitted on: 1/27/2019 8:55:54 PM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Darlene Ewan	Individual	Support	No

Comments:

SB-334

Submitted on: 1/29/2019 2:04:02 AM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Gonce	Individual	Comments	No

Comments:

The language of this bill worries me. Specifically the new language that states "Assistance animals may have formal training or may be untrained, and may include species other than dogs." I am a disabled veteran that has a certified PTSD trained service animal. Due to the increase of untrained dogs and other animals such as pigs, roosters, etc being passed off as 'emotional support animals' I feel extremely uncomfortable taking my service animal to many public establishments. This highend tension actually aggrivates my disability as then I am not focused on what my service animal is providing to me but of external circumstances.

Current ADA requirements state that service animals and emotional support animals must perform tasks directly related to the handlers disability. This requires training and constant reinforment of said training. Language that allows individuals to skirt this requirement by adding a new name for these animals would be very problematic.

I would offer an amendment of striking the language "Assistance animals may have formal trainingor may be untrained, and may include species other than dogs."

Mahalo

LATE

SB-334

Submitted on: 1/29/2019 9:37:27 AM

Testimony for CPH on 1/30/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Allen Wilson	Individual	Oppose	No

Comments:

This bill would invite the public to designate any animal as an assistance animal thus rendering the term meaningless and creating rampant fraud. In my experience the public is accepting of trained service animals, but generally not accepting of people bringing their household pets into stores, theaters, on transportation vehicles, etc. This bill would create more problems than it would solve.

Senator Rosalyn H. Baker
Chair, Committee On Commerce,
Consumer Protection, and Health

Re: Testimony In Support Of SB 334

Dear Chair Baker and Members of the Committee:

This bill will help clear up a lot of the confusion surrounding service animals and assistance animals. The bill will also help clear up the confusing terminology for animals requested under the state and federal fair housing acts (as opposed to under the Americans With Disabilities Act), which are variously referred to as emotional support animals, comfort animals and other names. Establishing assistance animal as the official term for those types of animals will be a benefit for anyone who has to deal with the issues.

By adopting the term assistance animal and explaining and defining what is meant by assistance animal, the legislature will be doing many people a significant favour by eliminating many misunderstandings. In summary, this bill will be very helpful to many people and should be approved for that reason.

Thank you for the opportunity to testify.

Very truly yours,

John A. Morris