

HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 23, 2021
Rm. 225, 3:10 p.m.
Via Videoconference

To: The Honorable Joy A. San Buenaventura, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members of the Senate Committee on Human Services

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 381, H.D.2

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 HCRC supports H.B. No. 381 H.D.2, which codifies the administrative rule definition of “assistance animal,” and clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for an assistance animal when the need is not readily apparent.

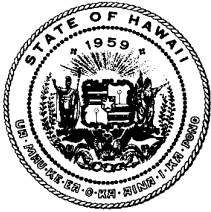
It is noteworthy that the H.D.2 amends H.R.S. § 515-3(9) at pages 6-7 of the bill, adding language that does more than codify the rule as did the original bill, expanding on the kinds of verification that can establish the disability-related need for a specific assistance animal as a reasonable accommodation for a person with a disability. This amendment is not problematic

and does not affect the HCRC's support for the bill.

The Hawaii Administrative Rules (HAR) have the full force and effect of law, so a codification of one of the definitions within HAR § 12-46-302 is not necessary. *State v. Kimball*, 54 Haw. 83 at 89 (1972). However, the HCRC does not object to the codification of the rule, which is substantially equivalent to the standard under the federal Fair Housing Act. H.B. No. 381, H.D.2, also allows a person engaging in the real estate transaction to request that a person claiming a disability provide verification to establish the disability-related need for a specific assistance animal as a reasonable accommodation, gives examples of several kinds of verification that would verify such need, and lists health care professionals who may provide verification information.

There has been much discussion over the past several legislative sessions about the issuance of dog vests and registration documents for a fee or purchase online, in the absence of a national registry or certification for assistance animals. H.B. No. 381, H.D.2, expressly clarifies that possession of a dog vest or registration documents that are commonly purchased online and purporting to identify an animal as a service animal or assistance animal will not constitute valid verification. The HCRC supports such clarification.

The HCRC supports H.B. No. 381, H.D.2.



DISABILITY AND COMMUNICATION ACCESS BOARD

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March 23, 2021

TESTIMONY TO THE SENATE COMMITTEE ON HUMAN SERVICES

House Bill 381, HD2 – Relating to Fair Housing Reasonable Accommodations

The Disability and Communication Access Board (DCAB) offers comments on House Bill 381, HD2 Relating to Fair Housing Reasonable Accommodations, specifically assistance animals for persons with disabilities.

HB 381, HD2 aims to codify the administrative rule 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) guidance concerning assistance animals and the definition already present in the HCRC administrative rules.

The bill also offers clarity on the verification of an animal as an assistance animal and the use of vests and other garments. This wording is consistent with HUD guidance.

Thank you for this opportunity to offer comments.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

P.O. Box 4777
Kaneohe, HI 96744

March 23, 2021

The Honorable Joy A. San Buenaventura
Chair
Senate Committee on Human Services
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, Hawaii 96813

Re: Support for House Bill 381, HD2 - Relating to Fair Housing Reasonable Accommodations

Dear Chair San Buenaventura, Vice Chair Ihara and members of the committee,

House Bill 381, HD2 - Relating to the Fair Housing Reasonable Accommodations provides a definition of "assistance animal" in state law; clarifies the type of verification that may be provided by an individual with a disability to establish the need for an assistance animal; and specifies that the possession of a vest or other distinguishing animal garment, tag, or registration does not constitute valid verification of a disability-related need for an assistance animal.

As the owner of a business, member of the Deaf and Blind Task Force, disability advocate, and retired employee of the Disability and Communication Access Board (provided technical assistance on housing and reasonable accommodations as it related to assistance animals), I **support** this bill. There is confusion about what qualifies as a service animal or an assistance animal. If the current law is amended as proposed by this bill, it will be clear what landlords, real estate brokers, salespeople, and property managers can ask to ensure the animal is needed to assist the individual with a disability in a residential setting. The intent of this bill also strengthens Section 515-3 of the Hawaii Revised Statutes which is enforced by the Hawaii Civil Rights Commission.

This will be especially helpful to people who do not have an obvious or readily apparent disability who need to use assistance animals to remain independent while at home. The Federal Fair Housing Amendments Act already requires this and having it in state law will reinforce that the state does not allow discrimination against people with disabilities who use assistance animals in housing.

Many landlords are worried that their tenants with assistance animals will damage their property or the animal will not behave appropriately. However, if other tenants are charged for damage to rented residential property, a tenant with a disability may also be charged for damage caused to the apartment by the assistance animal. Additionally, if other tenants are sanctioned for not following house rules related to noise levels, then tenants with disabilities may also be sanctioned for an assistance animal that barks constantly and cannot be controlled by the handler. Landlords and property managers may also establish relief areas and pick-up rules which tenants with disabilities are also responsible to follow for their assistance animals.

SB 280, the companion to this measure, was heard in the House Committee this morning at 9:00 a.m. Although I have no objections to the amendments made to this bill, I prefer the wording in SB 280. Thank you for the opportunity to testify.

Respectfully,

Debbra L. Jackson, M.S., C.S.C.
Owner
Alii Interpreting Services, LLC

HB-381-HD-2

Submitted on: 3/20/2021 10:19:27 AM

Testimony for HMS on 3/23/2021 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Support	No

Comments:

This Bill appropriately addresses the requirements for assistance animals and will help prevent abuse. **STRONG SUPPORT.**

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

March 21, 2021

Honorable Joy A. San Buenaventura
Honorable Les Ihara, Jr.
Committee on Human Services
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB381/COMMENTS FOR PROPOSED AMENDMENTS

Dear Chair San Buenaventura, Vice Chair Ihara and Committee Members:

The Community Associations Institute ("CAI") hereby submits this testimony providing comments for proposed amendments to HB381.

CAI supports the gist of SB280 in general, but respectfully requests the committee (1) consider prior amendments made to the companion bill HB381 and (2) make the following amendment (addition marked in **bold text** and deletion displayed in ~~striketrough text~~). This is to ensure SB280, as amended, will comply with the applicable provisions of the American Disabilities Act on service animals, which is summarized in the enclosed webpage published by U.S. Department of Justice attached hereto.

“~~[(9)]~~ To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation; provided that if reasonable accommodations include the use of an assistance animal, reasonable restrictions may be imposed; provided further that if the disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in the real estate transaction may request that a person claiming a disability provide verification to establish the disability-related need for a specific assistance animal as a reasonable accommodation. **When such assistance animal does not qualify as a service animal, The such** verification may include:

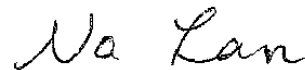
Honorable Joy A. San Buenaventura
Honorable Les Ihara, Jr.
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- (A) A determination of disability from a federal, state, or local government agency;
- (B) Receipt of disability benefits or services for a person under the age of sixty-five, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency;
- (C) Eligibility for housing assistance or a housing voucher received because of disability; or
- (D) Information confirming disability from a health care professional, including a physician, optometrist, psychiatrist, psychologist, physician assistant, nurse practitioner, or nurse.

Possession of a vest or other distinguishing animal garment, tag, or registration documents that are commonly purchased online and purporting to identify an animal as a service animal or assistance animal shall not constitute valid verification;"

CAI represents the condominium and community associations industry, and respectfully request the Committee to amend HB381 as suggested above. Thank you for the opportunity to testify.

Very truly yours,



Na Lan

Enclosure

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



ADA
Requirements

Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, contain updated requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How “Service Animal” Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act or the broader definition of “service animal” under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the relevant State attorney general’s office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is allowed to go. For example, in a hospital it usually would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.

Service Animals Must Be Under Control

A service animal must be under the control of its handler. Under the ADA, service animals must be harnessed, leashed, or tethered, unless the individual's disability prevents using these devices or these devices interfere with the service animal's safe, effective performance of tasks. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must generally allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care for or supervision of a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's ADA regulations have a separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Website

www.ADA.gov

To receive e-mail notifications when new ADA information is available,
visit the ADA Website's home page to sign up for email updates.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged.

The Americans with Disabilities Act authorizes the Department of Justice (the Department) to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

This guidance document is not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified in the Department's complete discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent.

Originally issued: July 12, 2011

Last updated: February 24, 2020

March 23, 2021

The Honorable Joy A. SanBuenaventura, Chair
Senate Committee on Human Services
Via Videoconference

RE: H.B. 381, HD2, Relating to Fair Housing and Reasonable Accommodations

HEARING: Tuesday, March 23, 2021, at 3:10 p.m.

Aloha Chair San Buenaventura, Vice Chair Ihara, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **supports** House Bill 381, HD2, which codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

Hawai'i REALTORS® are committed to upholding fair housing law and believes that this measure will provide clarity to the assistance animal provisions. These provisions often remains the most difficult process for those seeking to follow fair housing law properly.

Additionally, websites that sell service animal vests, registration documents or other items could confuse a consumer into thinking that qualifies their animal as an assistance animal. As such, HAR believes this will provided added clarity that these items are not a valid verification.

If the Committee is inclined to pass this measure, we would respectfully request a **November 1st effective date**. This would allow us to update the Service and/or Support Animal Addendum to the Rental Agreement and educate our members on the changes.

Mahalo for the opportunity to testify.