

HAWAI‘I CIVIL RIGHTS COMMISSION

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

April 1, 2021, 9:35 a.m.
via Videoconference

To: Hon. Karl Rhoads, Chair
Hon. Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

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

Re: H.B. No. 381, H.D. 2, 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 HCRC supported H.B. No. 381, H.D. 2, which codified 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. However, the S.D.1 adds some language that raises concern and could cause confusion. **The HCRC notes these concerns with H.B. No. 381, H.D.2, S.D.1, as discussed herein.**

The S.D.1 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.

However, at page 6, lines 14-16, the S.D.2 inserts this new additional language to HRS § 515-3(9):

When such assistance animal does not readily appear to qualify as a service animal, such verification may include ...

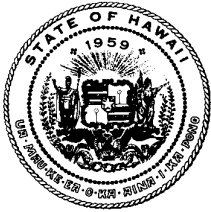
This new language is confusing and potentially problematic in this respect: It draws a hierarchical distinction between service animals (a type of assistance animal as defined) and other assistance animals that is unclear and undefined (“[w]hen such assistance animal does not readily appear to qualify as a service animal”), in effect creating two classes of persons with disabilities who request the use of an assistance animal as a reasonable accommodation – a distinction that does not exist in state or federal fair housing law. The reasonable accommodation law is and should be focused squarely on the rights and needs of the person with a disability, not on the “qualification” of certain assistance animals (there being no certification or registry of assistance animals).

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, S.D. 1, 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, S.D. 1, 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.

With its stated concern over the specific language added in the S.D.1, the HCRC otherwise supports H.B. No. 381, H.D.2, S.D.1.



DISABILITY AND COMMUNICATION ACCESS BOARD

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April 1, 2021

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY

House Bill 381, HD2, SD1 – Relating to Fair Housing Reasonable Accommodations

The Disability and Communication Access Board (DCAB) offers comments on House Bill 381, HD2, SD1 Relating to Fair Housing Reasonable Accommodations, specifically assistance animals for persons with disabilities.

House Bill 381, HD2, SD1 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

April 1, 2021

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Via Videoconference

RE: H.B. 381, HD2, SD1, Relating to Fair Housing and Reasonable Accommodations
HEARING: Thursday, April 1, 2021, at 9:35 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole, 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, SD1, 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.

HAR also appreciates the November 1st effective date as this will 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.

HB-381-SD-1

Submitted on: 3/30/2021 11:57:28 AM

Testimony for JDC on 4/1/2021 9:35:00 AM

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

Comments:

A needed remedy to the abuse by a few on assistance animals.

LATE

HB-381-SD-1

Submitted on: 3/31/2021 9:36:21 AM

Testimony for JDC on 4/1/2021 9:35:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jennifer Oana | Individual | Support | No |

Comments:

Thank you for the opportunity to provide testimony.

Although I do SUPPORT the bill to clarify that reputable verification must be required to have an assistance animal, I do think that this bill could go further.

Please take a look at the U.S. Department of Transportation's Final Rule on Traveling by Air with Service Animals. I request and recommend that the Committee align the proposed bill, and ultimately the State law, to the U.S. D.O.T.'s Final Rule. The Final Rule can be found at: [transportation.gov/sites/dot.gov/files/2020-12/Service%20Animal%20Final%20Rule.pdf](https://www.transportation.gov/sites/dot.gov/files/2020-12/Service%20Animal%20Final%20Rule.pdf).