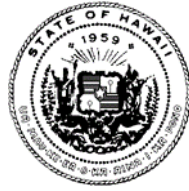


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



RYAN I. YAMANE
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

February 25, 2025

TO: The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 1493 SD 1 – RELATING TO SERVICE ANIMALS.**

Hearing: Thursday, February 27, 2025, 10:25 a.m.
Conference Room 211 and Videoconferencing, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill, provides comments, and defers to the Disability and Communication Access Board and the Department of the Attorney General.

PURPOSE: This measure requires (1) Sellers or providers of emotional support animals, as well as those issuing verifications of a disability related need for an emotional support animal, to provide a disclaimer explicitly stating that emotional support animals are not recognized as service animals under state law; and (2) Persons or businesses that sell or provide a certificate, vest, or identification tags that identify an animal as an emotional support animal or service animal to provide written notice to the buyer or recipient that contains certain disclosures. (SD1)

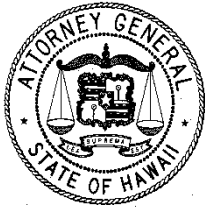
The Committee on Commerce and Consumer Protection amended the measure by:

- (1) Inserting language that requires a person or business that sells or provides an animal for use as an emotional support animal to also include in its written notice that the user of an emotional support animal is not entitled to the same rights and privileges accorded by law to a service animal;
- (2) Inserting language requiring a person or business who provides verification of the disability related need for an emotional support animal to provide a written notice to the buyer or recipient that includes certain statements;
- (3) Requiring a person or business that sells or provides a certificate, vest, or identification tag that identifies an animal as an emotional support animal to include in its written notice to the buyer the following:
 - (A) The item cannot be used to establish the emotional support animal as a service animal; and
 - (B) The item does not entitle the user of an emotional support animal to the same rights and privileges accorded by law to a service animal;
- (4) Inserting additional legislative findings;
- (5) Updating section 1 to reflect its amended purpose;
- (6) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

DHS appreciates the intent of the measure, as animals that are not adequately trained can, at the very least, present a distraction to, and in many cases endanger the health and safety of, individuals with disabilities and their rigorously trained service animals.

Recall that section 347-2.5, Hawaii Revised Statutes, only recognizes dogs as service animals.

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



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1493, S.D. 1, RELATING TO SERVICE ANIMALS.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Thursday, February 27, 2025 **TIME:** 10:25 a.m.

LOCATION: State Capitol, Room 211 & Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Lee-Ann N. Brewer,
Deputy Attorney General, at 808-587-3050)

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to increase awareness of the distinction between service animals and emotional support animals, and of the legal status conferred by verifications, certificates, vests, and identification tags pertaining to emotional support animals. According to this bill, the distinction between emotional support animals and service animals is not well known (section 1, page 1, lines 4-7) and individuals who obtain emotional support animals should be made aware that these animals do not qualify as service animals (section 1, page 2, lines 7-9).

To address this, section 2 of the bill proposes adding a new section to chapter 347, Hawaii Revised Statutes (HRS), requiring sellers or providers of emotional support animals to furnish written notice, with a receipt, stating that: (1) the animal does not have the special training required to qualify as a service animal; (2) the user of an emotional support animal is not entitled to the rights and privileges accorded by law to a service animal; and (3) knowing misrepresentation of an emotional support animal that does not meet the definition of a service animal under section 347-2.5, HRS, is subject to a civil penalty under section 347-2.6, HRS.

A similar requirement applies to persons or businesses providing verification of a disability-related need for an emotional support animal. The written notice must state

that: (1) the verification cannot be used to establish the emotional support animal as a service animal; (2) the user of an emotional support animal is not entitled to the rights and privileges accorded by law to a service animal; and (3) knowing misrepresentation of an emotional support animal that does not meet the definition of a service animal under section 347-2.5, HRS, is subject to a civil penalty under section 347-2.6, HRS.

Additionally, the bill imposes a similar requirement on sellers or providers of a certificate, vest, or identification tag that identifies an animal as an emotional support animal. The required notice must state that: (1) the certificate, vest, or identification tag cannot be used to establish the emotional support animal as a service animal; (2) the certificate, vest, or identification tag for an emotional support animal does not entitle the user of an emotional support animal to the rights and privileges accorded by law to the user of a service animal; and (3) knowing misrepresentation of an emotional support animal that does not meet the definition of a service animal under section 347-2.5 is subject to a civil penalty under section 347-2.6, HRS.

This bill may be subject to challenge under the Commerce Clause of the U.S. Constitution (U.S. Const. art. I, § 8, cl. 3), which provides that Congress shall have the power to "regulate Commerce . . . among the several States." Because this bill applies not only to in-state retailers, but to out-of-state and online retailers, it could be seen as placing an undue burden on interstate commerce. "Even if a statute regulates "evenhandedly," and imposes only "incidental" burdens on interstate commerce, the court must nevertheless strike it down if "the burden imposed on such [interstate] commerce may be deemed to be clearly excessive in relation to the putative local benefits.'" *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-472 (1981) (finding statute banning retail sale of milk in plastic containers did not discriminate against interstate commerce and burden imposed is relatively minor) (quoting *Pike v. Bruce Church Inc.*, 397 U.S. 137, 142 (1970)). "The extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Id.*

In this case, the issue appears to be that users of emotional support animals are either mistakenly or intentionally misrepresenting their animals as service animals with

the expectation that they are entitled to the same rights and privileges as users of service animals, notwithstanding the statutes governing service animals in Hawai'i. However, the extent of this confusion is unclear from the bill. Requiring all out-of-state and online retailers that sell or provide emotional support animals, certificates, vests, or identification tags to include the specific written notices on receipts may be deemed excessive to address this public awareness problem and could, therefore, violate the Commerce Clause. An alternative approach to increasing public awareness on this matter may be more advisable.

Even if the bill withstands constitutional scrutiny, it lacks an enforcement mechanism, making it likely ineffective in achieving the bill's goals. If the Committee decides to pass this bill with these notice requirements, we recommend clarifying the enforcement mechanism.

We also recommend the following revisions (in bold) for clarification:

On page 4, lines 5-7, amend section 347-__ (a)(2) to read as follows:

(2) The user of an emotional support animal is not entitled to the rights and privileges accorded by law to **the user of a service animal**;

On page 4, lines 12-15, amend section 347-__ (b) to read as follows:

(b) A person or business who provides verification of the disability related need for an emotional support animal shall provide written notice to the **[buyer or]** recipient that states the following:

On page 4, lines 18-20, amend section 347-__ (b)(2) to read as follows:

(2) The user of an emotional support animal is not entitled to the rights and privileges accorded by law to **the user of a service animal**.

On page 5, line 18 to page 6, line 2, amend section 347-__ (d) to read as follows:

(d) The written notices described in subsections (a), (b), and (c) shall be made in at least twelve-point bold type and shall be provided on the receipt for the emotional support animal, **the verification described in subsection (b)**, or the product described in subsection (c), or on a separate piece of paper that is attached to the receipt.

We respectfully request that if this Committee passes the bill, the proposed revisions be incorporated to enhance clarity and enforceability. Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEAN M. MATSUKAWA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON
WAYS AND MEANS AND JUDICIARY

FEBRUARY 27, 2025
10:25 AM
CONFERENCE ROOM 211

SENATE BILL NO. 1493, SD1
RELATING TO SERVICE ANIMALS

Chair Dela Cruz, Vice Chair Moriwaki, Chair Rhoads, Vice Chair Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 1493 SD1. The Hawaii Department of Agriculture (HDOA) supports the intent of SB 1493 SD1 and provides comment.

SB 1493 SD1 requires sellers or providers of emotional support animals, as well as those issuing verifications of an emotional support animal, to provide written notice to the buyer or recipient containing certain information. Requires persons or businesses that sell or provide certificates, vests, or identification tags that identify an animal as an emotional support animal to provide written notice to the buyer or recipient containing certain information. Establishes penalties.

Confusion exists when owners of emotional support animals that believe animals are afforded the same privileges as service animals. Service animals may only be dogs that are individually trained to do work or perform tasks for people with disabilities. US DOJ ADA regulations also contain a separate provision regarding miniature horses that



have been individually trained to do work or perform tasks for an individual with a disability. Individuals and companies that sell service dog accessories and certificates can add to the confusion when owners of pets and emotional support animals believe these items alone establish their pet or emotional support animal as a service animal.

Requiring sellers of certificates, vests, badges and other accessories for these animals include a disclaimer that these items do not confer service animal status to any animal will be useful. The Department defers to the Department of the Attorney General regarding constitutional legality of the measure.

Thank you for the opportunity to testify on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KĪWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Thursday, February 27, 2025
10:25 a.m.

Conference Room 211 & Videoconference
State Capitol, 415 South Beretania Street

To: COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

From: Dr. William J. Puette, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. 1493 S.D. 1 Relating to Service Animals
Support of intent with Comments

The Hawai‘i Civil Rights Commission (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. HCRC enforces laws protecting the people of Hawai‘i from discrimination in the areas of housing, employment, public accommodations, and in state and state-funded services.

The purpose of S.B. 1496 S.D. 1 is to provide clarity regarding the confusion and alleged misuse and misrepresentation of the designation of “emotional support animal” (ESA) and “service animal” (SA). The bill requires that written notice in twelve point font be provided by:

- Individuals selling or providing animals intended to be ESAs;
- A person or business providing medical verification of need for an ESA;
- A person or business selling certificates, vests, or identification tags for an ESA;

The bill requires the notice to state:

- The animal does not have the special training required to qualify as SA;
- The user of an ESA is not entitled to the rights and privileges accorded by law to a SA;
- Knowingly misrepresenting an ESA as an SA is a violation of H.R.S. 347-2.6.

As the agency tasked with enforcing laws protecting Hawaii's people in the areas of housing, employment, public accommodations, and in state and state-funded services, HCRC recognizes the confusion and potential harm when individuals misrepresent ESAs as SAs.

Although HCRC would not be enforcing this bill, HCRC offers the following for consideration.

HCRC suggests removing violations proposed under Section 2. (a) for any person or business selling or providing an animal “for use as an ESA”.

HCRC wants to highlight that an ESA serves an individual with a disability and the need for an ESA is based on the person with a disability's needs – not the animal itself. As many other testifiers have noted, because an ESA provides relief from a symptom of a disability simply by existing, an ESA can be *any breed of animal, and any animal could be designated as an ESA at any time in the life of the animal or the person with a disability*. Persons with disabilities have the need for this flexibility.

Although it may be possible for animals to be “advertised and sold as ESAs”, in HCRC's experience, this is not the case. In practice, any animal that could have been a pet can be utilized as an ESA or designated later as an ESA. The key is whether a medical professional deems it necessary to provide some kind of relief for an individual with a disability. ESAs of any animal type and any breed are protected, which begs the question whether *every animal sold* would need to have this notice? The same applies for SAs. Under the current law, an individual can self-train

their own SA; there is no official certification or entity that verifies an SA or ESA in the state of Hawai‘i. Thus, it is possible that any dog (or mini-horse) may be trained to perform a behavior that would then entitle them to be considered an SA at some time in its or its handler’s lifetime. HCRC is concerned the instant bill treats ESAs with more stringent treatment than SAs, which may have the unintended consequence of creating preferential treatment to individuals with mobility disabilities over mental disabilities, further exacerbating the stigma, misunderstanding, and frustration individuals with disabilities endure.

HCRC also suggests removing violations proposed under Section 2. (b) for persons or businesses providing verification of need of an ESA.

HCRC does not support providing violations for persons or businesses providing verification for persons with disabilities that necessitate ESAs or SAs. Under Hawai‘i state law, such verification may come from a person’s treating health care professional, mental health professional, or social worker. If an individual has a disability-related need, that recommendation and professional opinion should be the providers’ prerogative. HCRC has received reports of certain healthcare providers having a blanket policy of not providing such verifications as they are concerned about getting involved in legal matters and liability such as this bill may escalate. By reducing the number of providers who may be willing to verify the need for an ESA, this bill may create additional barriers for individuals with disabilities. In fact, online medical verifications may be needed more and more due to the scarcity of medical providers (especially in our rural communities) as well as the unwillingness of someone’s long-term provider to provide verification. Creating more liability for providers is not the solution.

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Section 2. (c) Labeling Enforcement and Content.

Apart from questions of legality under the Commerce Clause as raised the the attorney general's office, it is unclear how or who would enforce a provision requiring a notice being provided on items being sold.

HCRC is not adverse to providing additional information about the laws to provide clarity about the differences between ESAs and SAs for the public. However, there is a noticeable lack of information about the benefits that ESAs *do* afford their handlers. Although it is correct that persons with disabilities that utilize ESAs are not entitled to the same rights and benefits under the law as SAs, ESA handlers do have rights, such as the right to use and enjoy their housing accommodations accompanied by their ESA. If the label is intended to clarify the rights afforded to persons with disabilities, it should treat equally those entitled to an ESA as well as SAs by providing information about rights for those who use ESAs.

HCRC supports the intent of S.B. 1493 S.D. 1. Thank you for considering the above comments.

SB-1493-SD-1

Submitted on: 2/25/2025 4:31:08 PM

Testimony for JDC on 2/27/2025 10:25:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|--|--------------------|------------------------|
| Dara Fukuhara | Testifying for Hawaii Fi-Do Service Dogs | Support | Written Testimony Only |

Comments:

Subject: Strong Support for Measure to Prevent the Misrepresentation of Emotional Support Animals

Chair and Members of the Committee,

My name is Dara Fukuhara, and I am the board president of Hawaii Fi-Do Service Dogs. As an individual with a disability who is currently training a puppy to become my service dog, I am writing to express my strong support for the proposed measure that would require sellers and providers of emotional support animals, as well as those offering related certificates and identification tags, to clearly disclose that emotional support animals are not service animals under state law. This measure is a necessary step in addressing the widespread misunderstanding of the legal distinctions between emotional support animals and service animals, which has led to unintended consequences for individuals with disabilities who rely on trained service animals.

Service animals undergo extensive, specialized training to perform specific tasks that assist individuals with disabilities, making them essential for their handlers' independence and safety. Emotional support animals, while providing comfort and companionship, do not receive this level of training and are not granted the same legal protections under the Americans with Disabilities Act (ADA) or corresponding state laws. Unfortunately, the misrepresentation of emotional support animals as service animals has created significant challenges, including accessibility issues, public confusion, and even safety concerns in places where only trained service animals are permitted.

By requiring clear, written disclosure from those selling or verifying emotional support animals and related items, this legislation will help curb the growing problem of misrepresentation, reinforce existing legal protections for service animal users, and ensure that businesses and the public better understand the difference between the two. Additionally, the measure's amendments further strengthen its impact by expanding the disclosure requirements to include verification providers and those selling vests, certificates, and identification tags.

I respectfully urge you to support this measure, as it promotes public awareness, protects individuals with disabilities who rely on legitimate service animals, and upholds the integrity of service animal laws. Thank you for your leadership on this important issue, and I appreciate your time and consideration.

Sincerely,
Dara

February 27, 2025

The Honorable Donovan M. Dela Cruz, Chair

Senate Committee on Ways and Means

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Conference Room 211 & Videoconference

RE: Senate Bill 1493, SD1, Relating to Service Animals

HEARING: Thursday, February 27, 2025, at 10:25 a.m.

Aloha Chair Dela Cruz, Chair Rhoads, and Members of the Joint Committees:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 10,000 members. HAR provides **comments** on Senate Bill 1493, SD1, which requires sellers or providers of emotional support animals, as well as those issuing verifications of a disability related need for an emotional support animal, to provide written notice to the buyer or recipient containing certain information. Requires persons or businesses that sell or provide certificates, vests, or identification tags that identify an animal as an emotional support animal to provide written notice to the buyer or recipient containing certain information. Establishes penalties. Effective 7/1/2050

Hawai'i REALTORS® are committed to upholding fair housing law, including those governing service and emotional support animals. These provisions often remain the most difficult process for those seeking to follow fair housing law properly.

Websites that sell service animal vests, registration documents, or other items could confuse a consumer into thinking that it qualifies their animal as an assistance animal. As such, HAR believes that these disclosures would provide added clarity that these items are not valid verification.

Mahalo for the opportunity to provide testimony on this measure.

SB-1493-SD-1

Submitted on: 2/25/2025 12:02:27 PM

Testimony for JDC on 2/27/2025 10:25:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip Nerney | Individual | Support | Written Testimony Only |

Comments:

This bill addresses a real issue. Please pass.

SB-1493-SD-1

Submitted on: 2/26/2025 7:21:19 AM

Testimony for JDC on 2/27/2025 10:25:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Laurie Anne Bell | Individual | Oppose | Written Testimony Only |

Comments:

Stop regulating every aspect of our lives.

LATE

SB-1493-SD-1

Submitted on: 2/26/2025 3:27:07 PM

Testimony for JDC on 2/27/2025 10:25:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Marie Kouthoofd | Individual | Support | Written Testimony Only |

Comments:

Dear Chair, Vice Chair, and Committee Members,

My name is Marie Kouthoofd and I would like to express my support for SB1493.

I rely on my guide dog, Mango, for my safety and independence. Mango was selectively bred, and has undergone rigorous training to become a life-saving service dog. Service dogs like Mango are specially trained to assist individuals with disabilities, and the process is incredibly demanding, requiring years of training and significant financial investment.

I have nothing against emotional support animals (ESAs). Many provide comfort to their owners, but they do not have the specialized training of a service animal. The problem arises when people misrepresent ESAs as service dogs, which creates confusion and makes it harder for those of us who truly rely on service animals to be recognized and accepted in public spaces. Additionally, because ESAs are not held to the same rigorous training standards, they can sometimes behave poorly in public, further adding to the stigma and discrimination that those of us with legitimate service animals already face. The reason I feel this legislation is necessary is to protect the integrity of those with disabilities who use service animals so we don't face further discrimination due to others misrepresenting their ESAs as service animals.

This bill helps clarify that ESAs do not receive the same legal rights as service animals and that knowingly misrepresenting an animal as a service animal is illegal. It also requires sellers of ESA certifications or ID tags to disclose that these items do not grant service animal status. Furthermore, the bill enforces these requirements through written disclaimers and penalties for non-compliance.

I am in support of this bill because it helps address the issue of misrepresentation while ensuring that the rights of individuals with disabilities and their service animals are protected.

Thank you for your time and consideration.

Sincerely,

Marie Kouthoofd and Guide Dog Mango