



**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. 404, RELATING TO SERVICE ANIMALS.

BEFORE THE:

SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES AND ON
COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 7, 2025

TIME: 1:10 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lee-Ann N.M. Brewer, Deputy Attorney General

Chairs San Buenaventura and Keohokalole and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of the bill, as stated in section 1, page 1, lines 13-17, is to address "confusion" arising from the fact that service animal statutes do not extend to emotional support animals. This "confusion" may lead users of emotional support animals to mistakenly expect the same rights and privileges as users of service animals. To address this perceived problem, section 2 of the bill proposes requiring sellers or providers of emotional support animals to furnish written notice, with a receipt, explaining that: (1) the emotional support animal is not trained as a service animal; (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; and (3) knowing misrepresentation of an emotional support animal that does not meet the definition of a service animal under section 347-2.5, Hawaii Revised Statutes (HRS), is subject to a civil penalty under section 347-2.6, HRS.

The bill imposes a similar requirement on sellers or providers of a certificate, identification, tag, vest, leash, or harness that identifies an animal as an emotional support animal. The required notice must say that: (1) the item 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 (2) 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 (Article I, Section 8, Clause 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, as well as certificates, identifications, tags, vests, leashes, or harnesses that identify an animal as an emotional support animal, 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 the proposed notice requirements, we recommend clarifying the enforcement mechanism.

Thank you for the opportunity to testify on this bill.

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 5, 2025

TO: The Honorable Senator Joy San Buenaventura, Chair
Senate Committee on Health and Human Services

The Honorable Senator Jarrett Keohokalole, Chair
Senate Committee on Commerce and Consumer Protection

FROM: Ryan I. Yamane, Director

SUBJECT: **SB 404 – RELATING TO SERVICE ANIMALS**

Hearing: Friday, February 7, 2025, 1:10 p.m.
Conference Room 225 & Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this measure, defers to the Hawaii Civil Rights Commission, the Disability & Communication Access Board, and the Department of the Attorney General, and provides comments.

PURPOSE: The purpose of the bill is to require sellers or providers of emotional support animals, and seller or providers of certificates, identifications, tags, vests, leashes, and harnesses that identify an animal as an emotional support animal, to provide certain disclaimers to the buyer or recipient. Establishes penalties.

DHS supports the measure, as animals that are not properly 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 fully trained service animals.

DHS supports requiring the persons and businesses who sell or provide animals for use

as emotional support animals, as well as those who sell certificates, identifications, tags, vests, leashes, and harnesses for emotional support animals, to provide written notice stating that the animals do not have the training required to qualify as service animals, that 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; and that knowingly representing as a service animal any animal that does not meet the requirements of a service animal, as defined in section 347-2.5, Hawaii Revised Statutes (HRS), is a violation of section 347-2.6, HRS.

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



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Rm. 118 • Honolulu, Hawai'i 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • (808) 204-2466 (VP)

February 6, 2025

TESTIMONY TO THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES / COMMERCE AND CONSUMER PROTECTION

Senate Bill 404 – Relating to Service Animals

The Disability and Communication Access Board (DCAB) supports the intent of Senate Bill 404– Relating to Service Animals. This bill requires sellers or providers of emotional support animals to provide written notice to the buyers or recipients that the animal does not have the special training required to qualify as a service animal; the animal is not entitled to the rights and privileges accorded by law to a service animal; and knowingly misrepresenting as a service animal any animal that does not meet the statutory requirements of a service animal is a violation of law. It requires sellers or providers of certificates or identification tags for emotional support animals to provide written notice to the buyers or recipients that the item does not entitle an emotional support animal to the rights and privileges accorded by law to a service animal and knowingly misrepresenting as a service animal any animal that does not meet the statutory requirements of a service animal is a violation of law, and establishes penalties.

Misunderstanding and misrepresentations of emotional support animals (ESA) and service animals are a persistent issue. This is partially due to various disability-related laws having different definitions and providing unique processes to establish an animal as either an ESA or a service animal. The public educational aspect of this bill will help to reduce the occurrence of animals improperly misrepresented as service animals.

The bill does not specify an agency responsible for enforcement, which may limit its effectiveness. In contrast, Washington State has a similar law that explicitly authorizes “enforcement officers” to issue citations for violations. To enhance the bill’s impact, the Committee may consider amending it to designate a specific agency for enforcement.

DCAB recommends amending the bill to require professionals who provide reliable documentation confirming a client’s disability and disability-related need for an ESA, as permitted under the Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) Title I, to also provide the notice. DCAB also recommends amending the bill to require sellers of paraphernalia such as certificates, vests, and identification cards for ESAs and service animals to provide notice stating that these items do not establish an animal as either an ESA or a service animal.

DCAB suggests replacing Sections 1 and 2 of the bill in their entirety with the following:

SECTION 1. The legislature finds that existing law that makes it a civil violation to knowingly misrepresent as a service animal any animal that does not meet the statutory requirements of a service animal. However, information about what animals qualify as service animals or emotional support animals and what legal status certificates, vests and identifications confer is not well-known and should be provided to individuals. The Americans with Disabilities Act Title II (state and local government) and Title III (places of

public accommodation) regulations define a service animal to mean 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 Americans with Disabilities Act Title I (employment) does not have a similar definition but requires employers to make reasonable accommodations for an employee or job applicant with a disability which could be allowing the individual to use a service animal or an emotional support animal. The Federal Fair Housing Act defines an assistance animal as an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person's disability. State law conforms with these laws.

The legislature further finds that individuals who obtain emotional support animals should be made aware that these animals do not qualify as service animals. To address this, any person or business that sells or provides emotional support animals, or issues verification that an emotional support animal is needed to alleviate one or more symptoms of a person's disability, must include a written disclaimer stating that emotional support animals lack the training required to qualify as service animals, are not entitled to the legal accommodations provided to service animals under disability laws, and that knowingly misrepresenting them as service animals is unlawful. Additionally, when individuals purchase items such as certificates, vests, or identification tags, a disclaimer must clarify that these items do not establish that an animal meets the legal definition of a service animal. The purpose of this Act is to require sellers or providers of emotional support animals, as well as those issuing verifications for assistance animals, to provide a disclaimer explicitly stating that emotional support animals are not recognized as service animals under state law. Furthermore, sellers or providers of certificates, vests, or identification tags for service or emotional support animals must include a disclaimer indicating that these items cannot be used to establish an animal as a service animal or an emotional support animal under the law.

SECTION 2. Chapter 347, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§347 Emotional Support animals; disclaimer; civil penalty. (a) Any person or business that sells or provides an animal for use as an emotional support animal shall provide written notice to the buyer or recipient of the animal that states the following:

- (1) The animal does not have the special training required to qualify as a service animal;
- (2) The animal is not entitled to the rights and privileges accorded by law to a service animal; and
- (3) Knowingly misrepresenting as a service animal any animal that does not meet the requirements of a service animal, as defined in section 347-2.5, is a violation of section 347-2.6.

(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:

- (1) The verification cannot be used to establish an animal as a service animal.
- (2) The animal is not entitled to the rights and privileges accorded by law to a service animal; and
- (3) Knowingly misrepresenting as a service animal any animal that does not meet the requirements of a service animal, as defined in section 347-2.5, is a violation of section 347-2.6.

(c) A person or business that sells or provides a certificate, vest, or identification tag for an emotional support animal or a service animal shall provide written notice to the buyer or recipient that states the following:

- (1) The item cannot be used to establish an animal as an emotional support animal or a service animal.
- (2) Knowingly misrepresenting as a service animal any animal that does not meet the requirements of a service animal, as defined in section 347-2.5, is a violation of section 347-2.6.

(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 or the product described in subsection (b), or on a separate document that is attached to the receipt.

(e) Upon a finding of a preponderance of the evidence, a person who violates subsection (a) or (b) shall be fined not less than \$100 and not more than \$250 for the first violation, and not less than \$500 for a second violation and each violation thereafter.

(f) Nothing in this section shall preclude any other civil remedies available to a person, entity, or other organization arising from misrepresentation by another person of a service animal."

Thank you for considering our position.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kirby L. Shaw', with a long horizontal line extending to the right.

KIRBY L. SHAW
Executive Director

National Federation of the Blind of Hawaii testimony

Submitted by Virgil Stinnett, President

Senate Commerce and Consumer Protection (CPN) Committee

Thirty-third legislature, 2025 regular session

February 7, 2025, 1:10 pm, hearing on SB 404

Good afternoon, Chair, Vice Chair, and members. My name is Virgil Stinnett, President of the National Federation of the Blind of Hawaii, supporting SB404, relating to the Requirement of sellers or providers of emotional support animals or of certificates, identifications, tags, vests, leashes, and harnesses that identify an animal as an emotional support animal to provide certain disclaimers to the buyer or recipient. Establishes penalties.

Having been a handler of 2 guide dogs in my past, I am only too familiar with the potential and even at times very life hazardous situations as well as misperceptions and confrontations by comfort support animal owners who believe they have legal rights equal to those of a handler of a service animal.

It is critical we establish a well-defined difference with penalties. The overwhelming use of a support or comfort animal as if it is a true service animal has gone on too long. It causes true service animals and their handlers too many problems, and needs to stop.

Service animals provide a true service for people with disabilities. Service animals provide a specific highly trained duty a task specific to the needs of their handler. The time and dollars invested in a true service animal begins at birth and before it ever is given to the individual with the disability, often over 18 months of training by a certified service animal school, and tens of thousands of dollars, often upwards of \$60,000.

The National Federation of the Blind of Hawaii strongly supports this bill passing into law.

Mahalo for your consideration and moving this bill forward.

SB-404

Submitted on: 2/3/2025 5:58:14 PM

Testimony for HHS on 2/7/2025 1:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Jane Sugimura and Raelene Tenno	Testifying for Hawaii Council of Community Associations	Support	Written Testimony Only

Comments:

Hawaii Council of Community Associations supports SB404.

The disclaimer will assist not only the buyer but educate the public as well on the differences between a emotional support animal and and true Service Animal (dog).

Thank you for allowing this testimony.

Jane Sugimura, President - Hawaii Council of Community Associations

Raelene Tenno, Education Chair - Hawaii Council of Community Associations

SB-404

Submitted on: 2/3/2025 6:16:55 PM

Testimony for HHS on 2/7/2025 1:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Hawaii First Realty	Support	Written Testimony Only

Comments:

I support.

SB-404

Submitted on: 2/3/2025 5:52:22 PM

Testimony for HHS on 2/7/2025 1:10:00 PM

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

Comments:

SB 404 provides an important clarification to existing law. Please pass SB 404

SB-404

Submitted on: 2/3/2025 5:52:24 PM

Testimony for HHS on 2/7/2025 1:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

SUPPORT

This is so much needed!

Thank you for allowing this testimony!

Raelene Tenno

SB-404

Submitted on: 2/4/2025 1:02:14 AM

Testimony for HHS on 2/7/2025 1:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

I stand in strong support of SB404 regarding the differences between a Service Animal (SA) and an Emotional Support Animal (ESA) and the rules regulating them. As an owner of a service animal, Bambi, I can take him anywhere because of the stigma and discrimination created by medical doctors because they didn't know what was WRONG with me. I personally trained my dog, after my doctor finally approved me for an Emotional Support Animal but labeled me at my residence at Franciscan Vistas Ewa by people who knew nothing about laws, such as HIPAA, Health Information Portable Accountability Act or the American with Disabilities Act for discrimination of individuals. All of us have a mental health issue due to the isolation, depression, anxiety, and loneliness that the Covid pandemic created.

Bambi saved my life and helped me live after being labeled and discriminated against for almost 40 years by almost everyone I encountered. In 2005, I was a member of SAMHSA Center for Mental Health Services, National Advisory Council Subcommittee and visiting Washington DC three times a year. Tom Hester, Chief of AMHD who came to Hawaii in 2002 with the Recovery Model, under a Federal Mandate to improve our Hawaii State Hospital, as the 51st state hospital by NAMI's 2000 Grading the States, also hired me that year to coordinate the Hawaii Certified Peer Specialist program. Although trained by Appalachian Consultants in Hawaii, I was sent to Georgia and by the Veterans of the Pacific to Michigan in 2007. My lifetime of lived experiences helped me develop the program to train and certify those labeled with a mental health issue to find themselves and their purpose in life, not just as a peer in the mental health field. They went on to further their education, become pastors, authors, poets, in various fields in housing, as well as, great parents and role models in our community. But it labeled me throughout the islands as someone with a mental illness and couldn't find a job after 400+ applications.

Bambi has been a loyal and devoted friend and companion, who saw my angry outbursts caused by so many ignorant people. He has jumped into my face, pulled me away, as well as made me laugh and just was there, perhaps he knew I would otherwise take my anger out on him. He got me to exercise and no longer needed a walker, after I had isolated myself on my computer all day in my 3rd floor walkup apartment in Kapahulu. He understood when I needed to work and adjusted himself by using the shower if needed as a potty, but reminded me when it was time to go outside or even eat something. He walks with me on the bus and into airplanes, knows not to bark or attack other dogs or people and listens to verbal and hand motion signals. He goes to people who seem to need him or just to pet him. He is a better and faster

healer than anyone I know. Although most people know not to touch a service dog, many ask my permission, which Bambi is more than willing to oblige.

It's the owner that needs to be trained, not the dogs! Homeless individuals take advantage and sometimes take 3 dogs onto the bus, where they would bark or attack other service dogs. Homeless dogs like their owners do not understand where is their territory to protect and attack individuals if you come close to them or their owner. One man put a Service Dog harness on his dog that tried to attack Bambi in Jack-in Box twice. The owner panicked and dropped the leash and was more frightened than the dog when I yelled out "NO" both times. Yesterday, a man with a pit bull mix refused to leash his dog, until he realized that we'd be boarding the same bus,

Last year at the Capitol and Security at many places, including hospitals have no clue about service dogs. They will follow me, saying "He doesn't act like a service dog!" Or "Where's his harness?" This is discrimination and I am not a blind person where the dog has to be trained not to make me stumble or walk into the street. At Windward Mall, security followed me with his mask on for covid and should have kept social distancing. But instead he stood shoulder to shoulder with me, where Bambi got up and placed his paws on him, since he doesn't bark or bite. This security told me I had to leave the premises and even got another guard that did have an ID hand me a paper about their rules of what service dogs should do, have all 4 paws on the ground. I called their supervisor and DCAB of the Department of Health, but had to educate both men. DCAB said my dog wasn't a guard dog, but as a woman, Bambi has to be everything I need him to be!

Having four eyes is much better than just my two! His keen sense of smell and vision can detect things faster than I can and alerts me to any danger around us.. He provides me better security than anyone that I know. Dining in a restaurant, Bambi knows not to beg because I will not feed him due to Department of Health rules, that is unless something falls on the floor!. But some managers will watch me constantly like they have nothing better to do. **If people allow undisciplined children in their establishment then they should allow service dogs!** Mahalo for letting me share my story of my service dog, Bambi and please support SB404!.