

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

**LATE**

February 13, 2019

TO: The Honorable Representative John M. Mizuno, Chair  
House Committee on Health

The Honorable Representative Tom Brower, Chair  
House Committee on Housing

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1074 – RELATING TO ASSISTANCE ANIMALS**

Hearing: Thursday, February 14, 2019, 11:30 a.m.  
Conference Room 329, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of the measure, and respectfully offers comments.

**PURPOSE:** The purpose of the bill is to codify the administrative rule definition of “assistance animal,” and to clarify the type of verification of a reasonable accommodation request for an assistance animal that the individual may provide.

Division of Vocational Rehabilitation (DVR) personnel do not have training nor jurisdiction to verify that an individual with a disability requires an assistance animal as a reasonable accommodation for housing purposes. Rehabilitation Counselors at DVR assist eligible individuals with vocational impediments in preparing for, obtaining, maintaining, or advancing in employment.

The Hawaii Revised Statutes (HRS) guiding DVR's Services for the Blind Branch (SBB), as related to *service animals* are referenced below. There are no applicable statutes which apply to DVR as relates to **assistance animals**.

**§347-2.5 Service animal, defined.** *As used in this chapter, "service animal" means 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must relate directly to the individual's disability. Neither the potential crime deterrent effects of an animal's presence nor the provision of emotional support, comfort, or companionship by an animal constitutes work or tasks for the purposes of this definition. [L 2011, c 175, §2; am L 2018, c 217, §4]*

**[§347-2.6] Misrepresentation of a service animal; civil penalty.** *(a) It shall be unlawful for a person to knowingly misrepresent as a service animal any animal that does not meet the requirements of a service animal as defined in section 347-2.5.*

*(b) Upon a finding of clear and convincing evidence, a person who violates subsection (a) 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.*

*(c) 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. [L 2018, c 217, §2]*

It is important to note that through Act 217, Session Laws of Hawaii 2018, the Legislature added the above section 347-2.6, HRS; however, it did not provide a clear process or resources for the department to enforce the provisions. DHS reiterates the relevant portion of the Department of the Attorney General testimony submitted before the Senate Committee on Judiciary, SB2461, February 20, 2018,

"An investigator would have to prove that the animal was not trained to perform tasks to benefit an individual with a disability. An investigator's ability to investigate such an offense is limited by the Americans with Disabilities Act (ADA), which prohibits the following: (1) asking about the nature or extent of the owner's disability; (2) requiring proof that the animal has been certified, trained, or licensed as a service animal (28 C.F.R. 35.136(f)); (3) requiring the animal to wear an identifying vest or tag; and (4) asking the animal to demonstrate its ability to perform the task or work. Moreover, the ADA does not require service animals to be professionally trained. If the owner says he or she is training the animal personally, there is no way to prove otherwise. Finally, documentation that an animal is in fact, a service animal, has been deemed unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA."

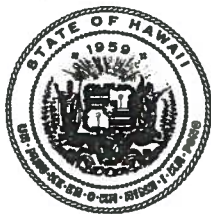
Similarly, in this measure we raise the issue that the requirement for a professional such as a rehabilitation counselor to perform a personal evaluation of the person with a disability is unclear, and additional clarification would be needed on what is meant by “personally evaluated.”

If a blind or visually impaired individual seeks the possibility of acquiring a **service animal** for purposes of **orientation and mobility**, he or she would be referred to organizations which determine suitability, such as Guide Dogs of Hawaii or Guide Dogs for the Blind.

DHS would urge that the current definition of service animals be maintained; and encourages increased public education and outreach regarding the importance of highly trained service animals to those individuals who rely upon such working animals for health, safety, and independence.

Further, we view this measure as related to the Fair Housing Act, and defer to the proper federal and state authorities with jurisdiction over such matters.

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



## DISABILITY AND COMMUNICATION ACCESS BOARD

---

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813  
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

February 14, 2019

### TESTIMONY TO THE HOUSE COMMITTEES ON HEALTH AND HOUSING

#### House Bill 1074 - Relating to Assistance Animals

The Disability and Communication Access Board (DCAB) offers comments on House Bill 1074 - 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 inconsistent with the U.S. Department of Housing and Urban Development (HUD) and the definition is 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.

Respectfully submitted,

FRANCINE WAI  
Executive Director



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 14, 2019  
Rm. 329, 11:30 a.m.

To: The Honorable John M. Mizuno, Chair  
Members of the House Committee on Health

The Honorable Tom Brower, Chair  
Members of the House Committee on Housing

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

Re: H.B. No. 1074

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. 1074 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 H.B. No. 1074 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.

Initially, we note that the bill adds the term “assistance animal” to HRS § 515-2, though the term “assistance animal” is not otherwise used in HRS chapter 515. The use of an “animal” as a reasonable accommodation is addressed in HRS § 515-(9), which allows the imposition of reasonable restrictions. “Assistance animal” is defined in HAR § 12-46-302.

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 H.B. No. 1074 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.

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

February 12, 2019

Honorable John M. Mizuno, Chair  
Honorable Bertrand Kobayashi, Vice Chair  
Committee on Health

Honorable Tom Brower, Chair  
Honorable Scott Z. Matayoshi, Vice Chair  
Committee on Housing

415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HB 1074 - OPPOSE

Dear Chairs Brower and Brower, Vice-Chairs Kobayashi and Matayoshi  
and Committee Members:

This testimony is submitted on behalf of the Community  
Associations Institute ("CAI"). **CAI is opposed to HB 1074.**

The proposed revision to Section 515-2, HRS, by the adding of  
a new definition for "assistance animals" is not a welcome change  
as it would permit under the law the use of "untrained animals" as  
well as allowing the use of "other species of animals" only  
exacerbates a very large problem by an ever growing number of  
individuals who have been very successful in circumventing the law  
through the use of fraudulent assistance animals. HB 1074, as  
written, will not mitigate nor alleviate this misuse of assistance  
animals.

False claims of entitlement to the use of an animal as a  
"reasonable accommodation" have become commonplace in condominiums  
and planned community associations. This is because applicable law  
and enforcement policy are such that challenging even the flimsiest  
claim is fraught with hazard. Those who make such false claims  
should be prosecuted appropriately under the law. Such claims make  
a mockery to those who are truly disabled and are really in need of  
an "assistance animal". The prevalence of such claims also inspires  
cynicism and disrespect for law.



Honorable Mizuno, Kobayashi, Brower and Matayoshi

February 12, 2019

Page two

First, "assistance animals" need to be limited to dogs. "Service dogs are defined as dogs that are individually trained to do work or perform physical tasks for people with disabilities and the law has been written to protect individuals with disabilities and their complete, unrestricted public access with their well-trained and skilled canine partners, it also has provisions to protect businesses from dogs (or other animals) with questionable behaviors. Individuals with a disability have the right to have their "Service Dog" accompany them anywhere members of the public can go, but business owners and patrons have rights, too.

Dogs or other animals whose sole function is to provide comfort or emotional support do not qualify as a Service Dog under ADA and are not entitled to public access. If a dog/animal doesn't perform task work, it is not a Service Dog/Animal - it is an Emotional Support dog/animal and is not entitled to unrestricted access. There is a long list of what service dogs should do and should not do in public (including condos). Service animals are trained and are always under the control, as well as, fully focused on their handler's needs and perform those tasks accordingly. If the dog's behavior infringes on the ability of others and exhibits "out of control" behavior (urinating or defecating inappropriately; whining or barking; eating or drinking from the table; having an unkempt/ungroomed appearance; sitting at the table on chairs/benches etc. Those animals aren't ready for public access and their presence should be restricted as they are not a trained animal able to perform those tasks. The goal should be not to challenge access but require appropriate behaviors.)"<sup>1</sup>

CAI represents the condominium industry and does not endorse this approach regarding the re-defining of Service Animals. We respectfully **oppose** HB 1074.

Warmest Aloha,

*Albert J. Denys, Jr.*

Albert J. Denys

---

1. This information has been prepared by Hawaii Fi-Do based upon the US Dept of Justice Civil Rights Division - Disability Rights section of the ADA 2010 Revised requirements and information from "Things Service Dogs in Public Should Do and Should Not Do." by Kea Grace.

**HB-1074**

Submitted on: 2/10/2019 9:59:00 AM

Testimony for HLT on 2/14/2019 11:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Oppose	No

## Comments:

Emotional support animals are a large problem. Recent news stories show the extent of the problem with the emotional support alligator, or the emotional support chickens in Hawaii. Airlines are taking a stronger stand. Other states have made it a misdemeanor for licensed professionals to falsely declare a person in need of an emotional support animal; it seems to be having an effect. This Bill does little to solve a big problem.

**HB-1074**

Submitted on: 2/8/2019 2:16:14 PM

Testimony for HLT on 2/14/2019 11:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
maile rogers	Individual	Support	No

Comments:

**HB-1074**

Submitted on: 2/8/2019 2:38:30 PM

Testimony for HLT on 2/14/2019 11:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip Nerney	Individual	Oppose	No

Comments:

The problem with "assistance animals" is widespread fraud. HB 1074 would facilitate fraud.

The "personally evaluated" standard in the bill is lax, vague and subject to abuse. The most rudimentary Internet search will reveal on-line services ready to supply personal evaluations, of a sort. There is a robust industry of persons supplying meaningless evaluations in exchange for money.

HB 1074 reflects an approach that disrespects and dishonors meaningful civil rights law; and disservices the truly disabled.