

JAN 28 2009

A BILL FOR AN ACT

RELATING TO DISCRIMINATION IN REAL PROPERTY TRANSACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that one out of every
2 seven people in Hawaii have an animal as a companion or as part
3 of their ohana. Yet about one hundred thousand animal
4 companions are euthanized each year, many because their owners
5 are forced to surrender their animal companions because their
6 housing does not permit them. Courts are being clogged with
7 eviction proceedings for those who have animals, and many
8 families are homeless because of those evictions. All these
9 factors contribute to millions of taxpayer dollars that could be
10 saved.

11 The purpose of the Act is to prohibit landlord-tenant
12 agreements from prohibiting pets in dwelling units.

13 SECTION 2. Chapter 521, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:



1 "§521- Landlord's no pet clause prohibited. A provision
2 in a rental agreement or any rule or practice prohibiting a
3 tenant from having a pet on the premises is void."

4 SECTION 3. Section 521-51, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§521-51 Tenant to maintain dwelling unit.** Each tenant
7 shall at all times during the tenancy:

8 (1) Comply with all applicable building and housing laws
9 materially affecting health and safety;

10 (2) Keep that part of the premises which the tenant
11 occupies and uses as clean and safe as the conditions
12 of the premises permit;

13 (3) Dispose from the tenant's dwelling unit all rubbish,
14 garbage, and other organic or flammable waste in a
15 clean and safe manner;

16 (4) Keep all plumbing fixtures in the dwelling unit or
17 used by the tenant as clean as their condition
18 permits;

19 (5) Properly use and operate all electrical and plumbing
20 fixtures and appliances in the dwelling unit or used
21 by the tenant;



1 (6) Not permit any person on the premises with the
 2 tenant's permission to wilfully destroy, deface,
 3 damage, impair, or remove any part of the premises
 4 which include the dwelling unit or the facilities,
 5 equipment, or appurtenances thereto, nor oneself do
 6 any such thing;

7 (7) Keep the dwelling unit and all facilities, appliances,
 8 furniture, and furnishings supplied therein by the
 9 landlord in fit condition, reasonable wear and tear
 10 excepted; ~~and~~

11 (8) Comply with all obligations, restrictions, rules, and
 12 the like which are in accordance with section 521-52
 13 and which the landlord can demonstrate are reasonably
 14 necessary for the preservation of the property and
 15 protection of the persons of the landlord, other
 16 tenants, or any other person[-]; and

17 (9) Obey all laws and ordinances regarding domestic
 18 animals kept as pets on the premises."

19 SECTION 4. Section 521-67, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "[+]§521-67[+] **Tenant's remedy for failure by landlord to**
 22 **disclose[-], or allow pets.** If the landlord fails to comply



1 with any disclosure requirement specified in section 521-43
2 within ten days after proper demand therefor by the tenant, the
3 landlord shall be liable to the tenant for \$100 plus reasonable
4 attorney's fees.

5 (b) If the landlord prohibits a tenant or prospective
6 tenant from having a pet on the premises, the landlord shall be
7 liable to the tenant or prospective tenant for an amount equal
8 to one month's rent plus reasonable fees and costs. A tenant or
9 prospective tenant may commence an action in the small claims
10 division of the district court, as provided in chapter 633 and
11 the rules of court thereunder, to adjudicate the matter. In any
12 such action, neither the landlord nor the tenant may be
13 represented by an attorney, including salaried employees of the
14 landlord or tenant."

15 SECTION 5. If any provision of this Act, or the
16 application thereof to any person or circumstance is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act, which can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

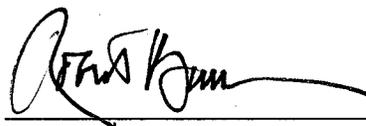
21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY:





Report Title:

Real Property Transactions; Animal Companions

Description:

Prohibits landlord-tenant agreements from having no pet clauses.



February 25, 2009

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1157 Relating to Discrimination in Real Property Transactions

HEARING DATE: Thursday, February 26, 2009 at 8:30 a.m.

Aloha Chair Baker and Members of the Committee:

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **opposes** S.B. 1156, which prohibits landlord tenant agreements from having "no pet" clauses.

Many landlords allow tenants to keep pets in their rentals. They do so for many reasons- for the love of animals, to access to a broader pool of tenants, or for reduced tenant turnover. However, allowing pets on a property can also pose risks, ranging from additional property damage to pet-induced injuries. As such, HAR has several concerns with the measure as written.

The practice of defining a "dangerous dog breed" is in and of itself controversial and subjective. Certain dog breeds having a propensity toward violence, including pit bulls and Rottweilers. However, dangerous dogs are not necessarily restricted to particular breeds. It is important to note that many insurance companies will either not issue liability policies if certain "dangerous breeds" are kept on a property, or will charge higher premiums because of the risk such pets pose.

Under the law, landlords have a duty to exercise reasonable care in the management of their property. The bill does not ensure that a landlord will be exempt from civil liability if a tenant's pet causes harm.

Further, in a high rise condominium, maintenance of common elements is a concern for the owners. Pets can cause damage and increase maintenance costs. These maintenance costs are ultimately passed down to all owners.

Finally, it is unclear if this measure, housed in the landlord-tenant code, would apply to homeowners within planned community or condominium associations.

HAR believes that, in a situation where a tenant has a letter or prescription from an appropriate professional, such as a physician, and meets the definition of a person with a disability, under the Americans with Disabilities Act, he or she should be entitled to a

reasonable accommodation that would allow an emotional support animal in the rental unit. These situations are already provided and protected under HRS § 515-3(8).

For these reasons, HAR respectfully opposes this measure. However, if the Committee is inclined to pass the measure, we would request the following amendment:

1. An effective date of November 1, 2009 should be specified so that HAR may review and revise its Rental Agreement and other forms accordingly.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

February 22, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN OPPOSITION TO SB 1156 RE
DISCRIMINATION IN REAL PROPERTY TRANSACTIONS
Hearing: Thursday, Feb. 26, 2009, 8:30 a.m. Conf. Rm. #229

Chair Baker, Vice-Chair Ige and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO opposes this bill and asks that it be held. The proposed revision to the Hawaii Landlord-Tenant Code requiring that any no-pets provision in a rental agreement be void and the penalties to any landlord who prohibits a tenant from having a pet is totally unfair to the landlord if that landlord happens to own a unit in a no-pet condominium or co-operative housing corporation since the landlord, in that case, cannot unilaterally override the condominium's or the co-op housing corporation's declaration to allow his or her tenant to have a pet. Allowing an override of the condominium declaration prohibiting pets would undermine the association's self-governance that is the lynchpin of HRS 514A and HRS 514B.

Further SB 1156 is unnecessary. The federal Fair Housing Act (at 42 USC §§ 3602(h) and 3604(B)) already provides that a resident in a rental or housing unit may keep a pet in a no-pets building as long as the resident provides a signed letter from a mental health practitioner or doctor that the tenant or resident has symptoms of a mental or physical disorder that would be alleviated by allowing the tenant to have a pet. This is part of the reasonable accommodations that must be provided to the pet owner under federal law. Violations can be reported to the Hawaii Civil Rights Commission, the local agency authorized by the federal law to investigate and enforce Fair Housing provisions.

In 2000, we helped Rep. Marilyn Lee draft a House Resolution supporting pets owners in condos and rental units and that resolution incorporated the Fair Housing language requiring condo boards and landlords of rental units to make reasonable accommodations to renters who complied with the federal requirements. Express language in that resolution required it to be transmitted to the Hawaii Humane Society and to HCAAO and we circulated to all of our member associations.

Most if not all condominium boards are aware of the Fair Housing law and our member associations have been allowing residents to have pets so long as they receive a letter from a doctor that includes the information required by the Fair Housing law triggering the right to reasonable accommodations.

Rather than pass another law that will unfairly affect apartment owners and landlords in "no-pets" condominium or co-op buildings, I suggest passing a Senate Resolution similar to the House resolution passed in 2000 and having organizations like the Humane Society conduct educational programs to assist renters who want to have pets.

For these reasons, we ask that you defer action on this bill.

Thank you for the opportunity to testify.

A handwritten signature in black ink, appearing to read "Jane Sugimura". The signature is fluid and cursive, with the first name "Jane" written in a larger, more prominent script than the last name "Sugimura".

Jane Sugimura
President



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

February 22, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Committee on Commerce & Consumer
Protection
State Capitol
Honolulu, HI 96813

VIA EMAIL: CPNTestimony@Capitol.hawaii.gov

Re: S.B. No. 1156 – Relating to Condominiums
Hearing: Thursday, February 26, 2009, 8:30 am, Conf Room 229

Dear Chair Baker, Vice-Chair Ige and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 24 of the last 30 years. MTA encompasses 16,000 plus units involving both single family units and numerous townhouse and apartment sub-associations where a number of homeowners rent their units to military and others needing to rent vice purchase.

We strongly oppose this measure for the following reasons:

- Based on realistic impacts of this bill is intended target, it really casts a wide net that snares all rental types: houses, condos, townhouses, and cooperatives in its webbing. The real issue, we surmise is the multi-unit projects vice the detached houses. The scope of the problem intended to be addressed does not fit the actual issue being experienced, and legislation should not encompass areas where problems are minimal or don't exist.
- However, regardless of this point, no consideration was given to the possibility of a reduction of rental units resulting because owners' decision not to rent, but rather to sell the units.
- The bill assumes pets to be cats and dogs primarily, but does not specifically identify what animals constitute "pets".
- More egregious, is that while the bill specifies penalties for landlord violations, there is clearly absent any penalties for renter violations.

Lastly, because of the variability in the construction of units that impact noise transmission, odor transmission, health concerns, and most importantly, the living environment in each project, to even attempt to legislate, across the board, this desire to have pets creates a "can of worms" for the homeowners/residents who bought and reside in these close quarter living environments. These kinds of issues should be left to the projects to decide.

While the bill's author's intent might appear to be justifiable, ramifications if passed, from incorrect targeting of the issue and inadequate specifics of the bill's provisions result in a bad measure, that in the final analysis is best left to the judgment of the owners of the properties.

Based on the above, we strongly urge this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Sen Bunda
Rep Lee, Rep Yamane

Steve Glanstein
P. O. Box 22885
Honolulu, HI 96823-2885

February 22, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony OPPOSING SB 1156; Hearing Date: February 26, 2009; sent via fax to 586-6659 and e-mail to: CPNTestimony@Capitol.hawaii.gov.

Dear Chair Baker, Vice-Chair Ige, and members of the Committees,

I work with numerous condominium associations as a Professional Registered Parliamentarian. This testimony is written from my perspective as a landlord in the State of Hawaii for more than 20 years.

I oppose this bill for three reasons. They are:

- a. It immediately alters existing landlord/tenant contracts without any compensation.
- b. It allows prospective tenants to hold the landlord financially hostage.
- c. It fails to recognize the extraordinary damage that can be caused by irresponsible pet owners and the fact that such damage can easily exceed the one month security deposit.

This bill, if enacted, will mean that landlords will have more legal battles. Here's how a scenario can unfold for landlords:

- a. Prospective tenant shows up to look at an apartment or house with his/her animal and applies to rent.
- b. Landlord decides to rent to somebody else.
- c. Tenant sues landlord for "one month's rent plus reasonable fees and costs" as allowed in this new 521-67(b).
- d. Tenant alleges that "one month's rent" should include the more expensive place tenant is now living in.
- e. Landlord has to represent him/herself, according to the same statute.
- f. Landlord agrees to payoff tenant outside of courtroom in order to avoid the risk of losing more money in court.

The bill also fails to recognize the damage that can be caused by irresponsible pet owners.

The urine or feces from pets can destroy a carpet as well as expensive wood flooring. **It is incomprehensible to assume that a one month deposit can even begin to cover the damage caused by many irresponsible pet owners.**

If the Committee really wants to pass this: Perhaps any change in the law should be coupled with the following requirements for the tenant who wishes to have an animal:

- a. The landlord may be able to require the tenant to obtain a bond from an "A" or better rated insurance company in a minimum amount of \$10,000 per pet to protect the property in the event that there is damage.
- b. The bond should be noncancellable, even if the pet leaves. We don't know the damage until the tenant moves out.
- c. The bond should be payable directly to the landlord.
- d. The minimum term of the bond must be the lease term plus three or four months in order to protect against overlap issues.
- d. The tenant's failure to pay the premium should be grounds for immediate lease termination, as well as eviction of the tenant and the pet.
- e. Acquisition of a pet during a tenancy without pets shall constitute immediate lease termination, as well as eviction of the tenant and the pet. A minimum penalty of 3 months' rent to the landlord could be provided unless the above bond is obtained prior to pet acquisition.

I urge the committees to hold this bill.

Thank you for the opportunity to present testimony on this subject.

Sincerely,


Steve Glanstein

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 21, 2009 3:35 PM
To: CPN Testimony
Cc: refrey2001@yahoo.com
Subject: Testimony for SB1156 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB1156

Conference room: 229
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Richard Frey
Organization: Individual
Address:
Phone:
E-mail: refrey2001@yahoo.com
Submitted on: 2/21/2009

Comments:

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, February 26, 2009
8:30 a.m.

TESTIMONY ON SENATE BILL NO. 1156 – RELATING TO DISCRIMINATION IN REAL PROPERTY TRANSACTIONS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Josephine van der Voort and I would like to submit my written testimony against Senate Bill No. 1156 – relating to discrimination in real property transactions. As a landlord owner, I would like the ability to allow or disallow pets on my property. I believe a property owner should have the right to determine who they should be able to rent to. There are plenty of landlords/property owners who allow pets on their property. I have seen places that allow pets on their property in ads placed in the paper and other public areas such as the dog park and the Hawaii Humane Society.

While I can empathize, as a pet owner myself, with these families who have pets, I believe they should have no problems finding places that will allow their pets on their property. I believe the underlying problems are mainly the way they maintain their current place, their ability to pay their rent, and/or their credit history. I know how hard it is to maintain my own property with my pet around much less someone else's property. It is a huge responsibility and in these tough economic times, people will have a more difficult time taking care of their own pets and trying to maintain a roof over their heads.

While Senate Bill No. 1156 states that "owners are forced to surrender their animal companions because their housing does not permit them", these owners would not have been evicted in the first place if they were "responsible" and had notified their landlords about having pets in the first place. Is it "responsible" on their part to not follow their rental agreements in the first place?

Senate Bill No. 1156 also states that "about one hundred thousand animal companions are euthanized each year" but nowhere does it state where they received this figure from. Are these actual "animal companions" or strays that haven't been spayed/neutered and are reproducing?

In summary, while the purpose of this bill is worthwhile, forcing property owners to allow pets on their property should remain up to the property owners.

Thank you for this opportunity to submit my testimony.

February 24, 2009

Hearing Date and Time: Thursday, February 26, 2009, 8:30 AM

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice-Chair
And Members Committee on Consumer Protection and Commerce

FROM: Sandra Tsuruda, Individual

RE: Subject: Senate Bill SB1156

Dear Chairs Baker and Vice-Chair Ige and Members:

Thank you for the opportunity to testify on this important bill. I support this Bill. As a twenty-year resident of Hawaii who has been a long-term rental tenant, I appreciate your consideration of this bill. As a family, our children haven't ever had the opportunity to have a pet due to the very restrictive rules of the majority of management companies and landlords. We have spent a lot of time talking about the kind of dog we would like to have and visiting the Humane Society as well as local pet stores hoping some day to be allowed to bring a new family member into our home. It is extremely difficult to find pet-friendly units or even buildings in Oahu and when one is found the additional costs are exorbitant and seem to penalize the renter or at the very least, discourage them from bringing their pets along. It would be fair to say that there are probably a lot of abandoned pets who's owners could not find a place to rent that allowed pets, not to mention a lot of broken-hearted pet owners who have to give up their precious dog or cat.

Thank you again for your consideration. Please pass SB1156.

Sincerely,

Sandra Tsuruda

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 2:31 PM
To: CPN Testimony
Cc: tedwalkey@hmcmtg.com
Subject: Testimony for SB1156 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB1156

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Ted Walkey
Organization: Individual
Address:
Phone: 8085936868
E-mail: tedwalkey@hmcmtg.com
Submitted on: 2/25/2009

Comments:

I am offering my opinion on SB 1157 as a landlord. I am opposed to this bill for 4 reasons:

- 1) It makes a pet owner a protected class of citizen.
- 2) It exposes me and potential tenants to pet dander to which they maybe allergic.
- 3) It usurps the right of people who have purchased a unit in a no pet building to enjoy the benefits of not having to put up the smell, noise, and droppings of pets.
- 4) There is no limit on the number or types of pets.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 25, 2009 3:32 PM
To: CPN Testimony
Cc: ayatora2003@yahoo.co.jp
Subject: Testimony for SB1156 on 2/26/2009 8:30:00 AM

Testimony for CPN 2/26/2009 8:30:00 AM SB1156

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Aya Yamashita
Organization: Individual
Address:
Phone:
E-mail: ayatora2003@yahoo.co.jp
Submitted on: 2/25/2009

Comments:

I support this Bill.

I never have pet in Japan, However, the family whom I lived with here had a pet. This was the first time to live with an animal. The smart and obedient dog gave me happy and heart to cherish animals.

Also, I often see that there are many people walking with their pets or having animals at home. My neighbor has four dogs and they cherish the dogs very much.

I think that the number of people with living alone in Hawaii is large. For them, the existence of animals will be necessary.

I do not want people who have an animal to be homeless because of it. Also, I do not want animals to be killed because of it.

LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY
201 MERCHANT STREET, SUITE 1500, HONOLULU, HAWAII 96813
PHONE: 808 537-1777
FACSIMILE: 808 537-1776

February 22, 2009

Senator Rosalyn H. Baker
Chair, Committee on Commerce
and Consumer Protection
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SB 1156/Oppose-2/26 @ 8:30 a.m.
Commerce and Consumer Protection

Dear Senator Baker:

I am an attorney in private practice. This testimony is written from the perspective of being a landlord.

With respect to SB 1156, define "pet." Does it include chimpanzees? One just ate a woman's face in Connecticut. Does it include Rottweilers and pit bulls? How many?

What if the landlord has wooden floors? Who bears the loss for the pet claws gouging and ruining the floors? The landlord? Why?

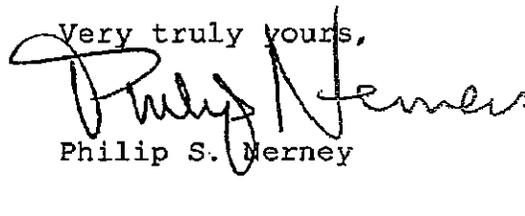
The proposed new subsection 9, concerning compliance with "all laws and ordinances regarding domestic animals", does not address property right issues. The efficacy of such laws is open to serious question in all events.

This bill reeks of hostility to property rights. The bill contains a provision to hand out free money to disgruntled pet owners; but it omits provisions requiring the tenant to post collateral for damages. That asymmetry is telling.

What it tells is that this measure does not make the slightest effort to fairly and equitably balance the competing, legitimate interests of landlords. It should not be passed.

Please do not pass SB 1156.

Very truly yours,



Philip S. Nerney