



## DISABILITY AND COMMUNICATION ACCESS BOARD

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

March 3, 2023

### TESTIMONY TO THE SENATE COMMITTEES ON JUDICIARY AND WAYS AND MEANS

#### Senate Bill 612 SD1 – Relating to Service Animals

The Disability and Communication Access Board (DCAB) supports Senate Bill 612 SD1 – Relating to Service Animals. This bill requires that a disclaimer be provided by sellers or providers of emotional support animals of certificates, identifications, tags, vests, leashes, and harnesses for emotional support animals that the animal is not a service animal.

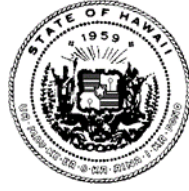
Under Titles II and III of the Americans with Disabilities Act (ADA), state and local governments and places of public accommodation must allow service animals to accompany people with disabilities in all areas of a facility where the public is allowed to go. Untrained animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA. DCAB is aware that people with emotional support animals may not understand that state and local governments and places of public accommodation are not obligated to allow emotional support animals to accompany them in all areas of a facility where the public is allowed to go. DCAB encourages increased public education and awareness to clarify that an emotional support animal is not a service animal as defined under Titles II and III of the ADA.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

KIRBY L. SHAW  
Executive Director

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



CATHY BETTS  
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

March 1, 2023

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

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

FROM: Cathy Betts, Director

SUBJECT: **SB 612 SD1 – RELATING TO SERVICE ANIMALS**

Hearing: Friday, March 3, 2023, 10:00 a.m.  
Conference Room 211 & Videoconferencing, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this bill, provides comments, and defers to the Hawaii Civil Rights Commission.

**PURPOSE:** This bill requires that a disclaimer be provided by sellers or providers of emotional support animals or certificates, identifications, tags, vests, leashes, and harnesses identifying an animal as an emotional support animal that the animal is not a service animal. Establishes penalties. Effective 7/1/2050. (SD1)

The SD1 amended the measure by:

- (1) Inserting language that clarifies that a user of a service animal, rather than the service animal itself, has certain rights and privileges;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion;
- (3) Amending section 1 to reflect its amended purpose; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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.



# HAWAI‘I CIVIL RIGHTS COMMISSION

## KOMIKINA PONO KĪWILA O HAWAI‘I

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

Friday, March 3, 2023, at 10:00 a.m.  
Conference Room 211 & Videoconference

To: The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice Chair  
Members of the Senate Committee on Judiciary

To: The Honorable Senator Donovan M. Dela Cruz, Chair  
The Honorable Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Members of the Senate Committee on Ways and Means

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

### **Re: S.B. No. 612, S.D.1**

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC offers comments and concerns on S.B. No. 612, S.D.1 and supports only the creation of a new subsection § 347-\_\_ (b) (page 3, starting on line 18).** The purpose of the bill is to require that a disclaimer be provided by sellers or providers of emotional support animals or certificates, identifications, tags, vests, leashes, and harnesses for emotional support animals.

The HCRC understands the confusion that surrounds the definitions of assistance animals, and that many people do not understand the difference between a service animal, individually trained to perform a task for an individual with a disability, and an emotional support animal, which provides emotional support for an individual with a disability.

The HCRC supports the creation of the new subsection 347-\_\_ (b) found on page 3 of the bill starting at line 18, to the extent that it requires persons and businesses that sell or provide certificates, identifications, tags, vests, leashes, and harnesses for emotional support animals to provide written notice stating that: 1) the item does not entitle the user of an emotional support animal rights and privileges accorded to the user of a service animal and, 2) that knowingly misrepresenting an animal that does not meet the requirements of a service animal as a service animal is a violation of law.

S.B. 612, S.D.1 amended the language about which we had previously expressed concern. The original version of the bill stated that service animals enjoy certain privileges, and that the law does not extend those privileges to emotional support animals. This misstated the law and was based on a faulty premise. Under state and federal law, neither service animals nor emotional support animals are accorded rights or privileges. State and federal civil rights laws provide for the right of persons with disabilities to reasonable accommodation – this right to reasonable accommodation belongs to and is exercised by the person with a covered disability. Under state fair employment law (HRS chapter 378, part I), fair housing law (HRS chapter 515), and public accommodations law (HRS chapter 489), as well as the federal Fair Housing Act (FHA) and Americans with Disabilities Act (ADA), ***animals do not have rights or privileges***. In this respect, use of a service animal is the reasonable accommodation, analogous to the use of a wheelchair or other assistive device. The amendments in S.D.1, Section 1 clarified that the user of an animal, the person with a disability, is entitled to an accommodation. Often the person who uses an assistance animal is referred to as a “handler.”

It is unclear how subsection § 347-\_\_ (a) of this measure would affect sellers of dogs, cats, rabbits and other animals, including non-profit entities who do not know the reason a person is adopting an animal (and should not inquire into any disability-related reasons). The bill also ignores the fact that an animal that is not trained to be a service animal (to do work or perform tasks for a person with a disability) can later be so trained (even by its owner/handler) and become a service animal for the person with a disability.

The HCRC supports only the creation of the new subsection 347-\_\_ (b) found on page 3 of the bill starting at line 18, and not the rest of the bill.

PETER L. FRITZ  
T-Mobil Relay (808) 568-0077

THE SENATE  
THE THIRTY-SECOND LEGISLATURE  
REGULAR SESSION OF 2023

COMMITTEE ON JUDICIARY  
COMMITTEE ON WAYS AND MEANS

Testimony on S.B. 612 SD1  
Hearing: March 3, 2023

RELATING TO SERVICE ANIMALS

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Gabbard, and members of the Committees. My name is Peter Fritz. I am testifying **in support** of this bill. The purpose of this bill is to provide information that the ESA is not a service dog and to impose penalties for the fraudulent and subsequent misrepresentation of emotional support dogs (ESA) as service dogs.

California has passed a similar law. The California law was sponsored by Guide Dogs for the Blind and Canine Companions for Independence because people misrepresenting that their pet was a service animal had caused businesses to become skeptical that their guide dog was a legitimate service animal. Misrepresentation is a problem and this bill will help curb misrepresentation.

The California legislature noted that there had been an increase in the fraudulent selling and subsequent misrepresentations of emotional support dogs as service dogs, including businesses selling various misleading ESA-related certificates and merchandise that inaccurately imply that ESAs have the same legal rights and privileges as service dogs. Items generally include vests, tags, patches, holographic identification cards, and certificate documents prominently featuring the words “Emotional Support Animal” and in some instances “ESA, Protected Under Federal Law” which can imply that ESAs wearing such accessories are granted the same rights as service dogs.

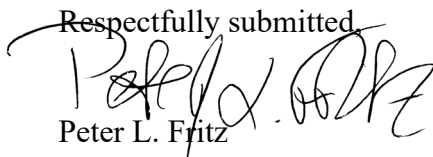
ESAs are NOT service animals. Under the ADA, a service animal is a dog that has been individually trained to perform tasks for an individual with a disability. A dog that is not trained to perform specific acts related to a person’s disability is not a service animal. While federal and state laws require that service dogs be allowed to accompany their human partner in public places, ESAs do not have to be allowed.

This bill will help to stop misrepresentations by placing owners of dogs on notice that their dog or ESD is not a service animal.

I respectfully request that this committee move this bill.

Thank you for the opportunity to testify.

Respectfully submitted,

  
Peter L. Fritz