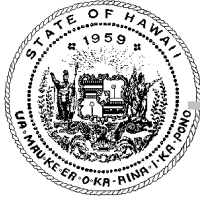


**LATE**



# HAWAI'I CIVIL RIGHTS COMMISSION

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

February 21 2020  
Rm. 229, 10:00 a.m.

To: The Honorable Rosalyn H. Baker Chair  
The Honorable Stanley Chang, Vice Chair  
Members of the Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole Vice Chair  
Members of the Senate Committee on Judiciary

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

Re: SB. No. 2200

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.

S.B. No. 2200, if enacted, will require state-licensed physicians and osteopaths (licensed under HRS chapter 453), mental health counselors (HRS chapter 453D), nurses (HRS chapter 457), optometrists (HRS chapter 459), psychologists (HRS chapter 465), and social workers (HRS chapter 467E), who are requested to provide documentation to support a request for the use of an assistance animal or service animal as a reasonable accommodation in housing, to make written "findings" attesting to whether a patient or client has a disability and whether the need for an assistance animal or service animal is related to the disability so long as certain circumstances are present. It also would require the HCRC, in consultation with the department of the Attorney General, to adopt rules and prescribe forms.

**For the reasons discussed below, the HCRC opposes S.B. No. 2200.**

On its face, S.B. No. 2200 would only require and allow documentation of two elements:

- 1) that the person requesting the reasonable accommodation is a person with a disability; and
- 2) that there is a disability-related need for the requested assistance or service animal.

Although these new required inquiries are allowable and relate to information and documentation that are relevant to the state and federal fair housing reasonable accommodation analysis, on closer examination the specifics of the bill conflict with the federal Fair Housing Act. The bill would also require the HCRC, in consultation with the Attorney General to develop a form prescribed by rule to be used by covered licensees to document their “findings.” This also likely violates the federal Fair Housing Act.

Our state fair housing laws, HRS chapter 515, and HAR Title 42, chapter 46, subchapter 20, are 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). HUD requires certification of substantial equivalence between state fair housing law and the FHA. Imposition of requirements that are more restrictive than FHA requirements for persons requesting a reasonable accommodation 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.

HUD recently issued a guidance on “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,” at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

The specific requirements proposed in S.B. No. 2200, conflict with the federal FHA in at least three respects:

1. By reference to HRS chapters 453, 453D, 457, 459, 465, and 467E, the new documentation requirements are based on a premise that persons with a disability who request the use of an assistance animal must have documentation from a physician, osteopath, mental health counselor, nurse, optometrist, psychologist, or social worker licensed in Hawai’i. There is no such requirement under the federal FHA, which requires acceptance of documentation from out-of-state professionals not licensed in Hawai’i. Imposition of this requirement will impact residents who have recently relocated to Hawai’i, part-time/seasonal residents, and Hawai’i residents who have out-of-state medical providers.
2. The bill calls for the HCRC, in consultation with the Attorney General, to develop a form prescribed by rule for (Hawai’i licensed) health professionals to document their findings. Under the FHA, a housing provider may not require a health care professional to use a specific form to document that the requestor of a reasonable

accommodation is a person with a disability and that there is a disability-related need for the requested accommodation. Under the FHA, there are no “magic words” of prescribed documents, but rather a mandatory interactive process for housing providers to assess the request. And,

3. The bill requires the (Hawai'i licensed) health professional to “attest” to a “finding” that their patient has a disability and that the need for the requested service or assistance animal is related to the disability. But, it goes on to say the licensee **shall not** make such finding unless the licensee has met with the patient in person or via telehealth, the licensee is familiar with the patient and the disability, **and** the licensee is legally and professionally qualified to make the finding. Under the FHA, a housing provider may not require a health professional to make statement under penalty of perjury, as the use of “attest” implies a sworn statement. An “in person” examination is not required under the FHA. And, perhaps most consequentially, requiring licensed health professionals to attest that they are “legally and professionally qualified” to make a finding is not required under the FHA, is nonsensical and will have a chilling effect on those licensed health professionals willingness to provide statements to document a disability and the need for a reasonable accommodation. It is important to keep in mind that in the reasonable accommodation process it is the housing provider, not the licensed health professional, who assesses requests and decides whether to provide a reasonable accommodation. All licensed health professional can be asked to do is to is document that a patient has a physical or mental impairment that substantially limits a major life activity, and, in the case of a request for the use of a service or assistance animal as a reasonable accommodation, whether the patient needs the animal because it does work, provides assistance, performs at least one task that benefits the patient because of the patient’s disability, or provides therapeutic emotional support to alleviate a symptom or effect of the disability.

**The proposed statute is duplicative because there is an HCRC rule addressing these documentation and verification issues.** Hawai'i administrative rules have the force and effect of law. *State v. Kimball*, 54 Haw. 83 at 89 (1972). H.A.R §12-46-306 allows housing providers to request the same information from the applicant’s health care professional, when the requestor’s disability is not apparent.

.....If the disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request verification that the assistance animal is needed to alleviate one or more

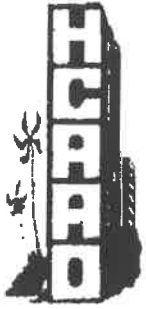
symptoms of the person's disability. Verification may be provided by a letter or other communication from the person's treating health care professional, mental health professional, or social worker.

The rule is clear that verification can only be provided by the applicant's treating health care professional, mental health professional, or social worker.

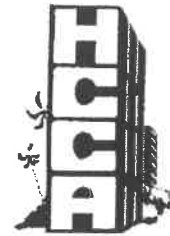
The federal Fair Housing Act requires housing providers to make a reasonable accommodation to a person with a disability to have equal opportunity to use and enjoy a residential unit, including the use of an assistance animal when appropriate. It imposes similar restrictions sought by this bill, and puts the burden on the person requesting the accommodation, rather than the health care provider. Guidance issued by HUD last month can be found at: <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

The recent HUD guidance makes it clear that pursuant to federal law the applicant's supporting information must document the connection between the disability and the need for an assistance animal, making this bill unnecessary and duplicative.

The HCRC opposes S.B. No. 2200.



**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 19, 2020

Sen. Rosalyn Baker, Chair  
Sen. Stanley Chang, Vice-Chair  
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in support of  
SB2200 Relating to Fair Housing Reasonable Accommodations  
Hearing: Friday, Feb. 20, 2020, 9 a.m., Conf. Rm. #229

Chair Baker and Vice-Chair Chang and Members of the Committee:

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

HCCA unequivocally supports the Fair Housing Act, which prohibits housing discrimination on the basis of race, color, religion, sex familial status, national origin and disability. However, we believe that many requests for reasonable accommodations by people who claim their pets are assistance animals are being made to evade housing providers (e.g., condominiums, co-ops, homeowners associations) “no-pets” restrictions<sup>1</sup>.

HCCA supports this bill for the following reasons:

- The licensed professional preparing the request for reasonable accommodation will be required to meet with and diagnose the person seeking the accommodation.
- The licensed professional preparing the request will be required to make written findings as to the resident’s disability and whether the need for an assistance animal is related to that disability.

HCCA requests that the bill be amended to include sanctions against the licensed professional for failure to comply, e.g., successive fines from \$500 to \$1,000 or non-compliance to be considered in connection with License renewals.

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<sup>1</sup> Most “no-pets” rules are contained in association by-laws that are the result of a 67% vote of the owners to prohibit pets in the building to accommodate residents (i) with pet-related allergies, (ii) who are afraid of cats or dogs, (iii) who wish to live in a building without animals.

For these reasons, HCCA respectfully requests that you pass out this bill with an amendment imposing sanctions for non-compliance. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President

**SB-2200**

Submitted on: 2/16/2020 1:37:48 PM

Testimony for CPH on 2/21/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Testifying for Associa	Support	Yes

Comments:

This is a serious nationwide and Hawaii problem. HUD recently changed its policy to allow more questions to validate the need. Airlines with FAA approval are limiting travel to dogs. We all support the legitimate needs of disabled persons but the process is being abused. Abused to the extent we now have emotional support chickens, turkeys, pigs, geckos, insects, and BEER. Yes, a mainland person recently certified his beer as emotional support on an online website (national news). It is not unreasonable that a person have certification for the need from a local licensed health care professional.

**SB-2200**

Submitted on: 2/18/2020 7:41:50 PM

Testimony for CPH on 2/21/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Testifying for Palehua Townhouses	Support	No

Comments:

Our association supports SB200. Although we totally support the Fair Housing Act, individuals who claim to have an assistant service animal need to be verified by a local licensed professional.

Please pass SB2200.

Mike Golojuch, Sr.

President, Palehua Townhouse Association



Raelene Tenno  
POBox 283195  
Honolulu, Hawaii 96828

2/14/2020

Testimony in SUPPORT of SB2200

As a landlord having to deal with pets in a “no pet” building, I SUPPORT bill SB2200. The violations for initial fine should be a considerable amount say \$1000.00 and a hefty increase in each additional violation and after 3 violations their license would be subject to full review or loss of license.

Attached is a recent article where the Federal Dept. of Transportation is initiating new rules regarding pets on their planes.

Thank you for this opportunity to submit this testimony.

Raelene Tenno

# DOT proposes new rules for emotional support animals on planes

*The new rule could prohibit animals, other than dogs, from flying.*

By

**Matthew Vann**

January 22, 2020, 10:22 AM

5 min read

**New rule allows airlines to ban some support animals** *Service animals would be limited to trained dogs only and just for passengers with disabilities or psychiatric disorders* The Washington Post via Getty Images, FILE

Travelers may be used to flying with their emotional support [animals](#) -- anything from a pet hamster to a baby crocodile -- but the rules are about to change, according to a new proposal from the Department of Transportation.

The proposal [unveiled by DOT](#) on Wednesday proposes to strictly limit the definition of a service animal to a dog, reversing a policy that permits a wide range of other animals to fly under that framework.

DOT's new rule also no longer requires [airlines](#) to recognize emotional support animals, with the agency citing a number of reasons for the change.

es, FILE

Department officials noted that airlines have consistently complained of fraudulent incidents [related to the declaration of certain pets](#) as emotional support animals, even costing the industry millions in unpaid pet carriage fees.

The airline industry as a whole is applauding the move as a means of ensuring the safety of every flying traveler.

"The increased availability of fraudulent ESA credentials has enabled people who are not truly in need of animal assistance to abuse the rules and evade airline policies regarding animals in the cabin," Airlines for America said in a statement. "This has led to an increase in incidents by untrained animals threatening the health and safety of passengers, crew and passengers with disabilities traveling with legitimate service animals."

In one instance, United Airlines [denied a passenger's attempt to bring a peacock onto a flight out of Newark Liberty International.](#)

According to the petition, "passengers have attempted to fly with many different unusual species of animals, such as a peacock, ducks, turkeys, pigs, iguanas, and various other types of animals as emotional support or service animals, causing confusion for airline employees and additional scrutiny for service animal users."

The proposal also come with new check-in rules for passengers looking to fly with service animals, requiring them to arrive at the airport at least an hour earlier than passengers flying without animals.

"Airlines want all passengers and crew to have a safe and comfortable flying experience," said Nicholas E. Calio, president and CEO of A4A, adding "We are confident the proposed rule will go a long way in ensuring a safer and healthier experience for everyone."

<https://abcnews.go.com/Politics/dot-proposes-rules-emotional-support-animals-aboard-planes/story?id=68452828>

**SB-2200**

Submitted on: 2/18/2020 1:42:26 PM

Testimony for CPH on 2/21/2020 10:00:00 AM

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

Comments:

SB 2200 reflects recognition of a serious problem. Fraudulent claims of entitlement to “assistance animals” are common. Obtaining supportive documentation to enable such claims is easy, and involves little more than going on-line and making payment of a fee.

SB 2200 should be amended to include meaningful sanctions sufficient to deter misconduct by professionals who sell documentation for profit or to facilitate an agenda. As written, SB 2200 lacks deterrent value.

**STRONG OPPOSITION TO SB2200**

**SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION,  
HEALTH/JUDICIARY**

**FRIDAY, 2/21/2020 AT 10A.M. IN ROOM 229**

**AS DISABLED CITIZENS IN LILIHA, WE ARE STRONGLY OPPOSED TO THIS BILL  
BECAUSE IT WILL CREATE ANOTHER BARRIER FOR US TO OBTAIN A MUCH  
NEEDED ASSISTANCE ANIMAL OR SERVICE ANIMAL. WE UNDERSTAND THE  
ABUSE THAT IS OCCURRING, BUT THIS BILL IS NOT THE SOLUTION. DOCTORS  
WILL BE TOO SCARED TO PROVIDE A NOTE TO PATIENTS AND DISABLED  
PEOPLE WILL BE TO EXHAUSTED TO GO THROUGH ALL THE RED-TAPE TO GET  
HELP.**

**OUR DOGS PROVIDE MUCH NEEDED EMOTIONAL AND PHYSICAL HELP TO US.  
MANY OF OUR LIVES WOULD BE SEVERELY HURT IF WE WERE NOT ALLOWED  
TO HAVE OUR EMOTIONAL SUPPORT OR SERVICE DOGS.**

**MAHALO**

**LATE**

**SB-2200**

Submitted on: 2/20/2020 10:40:24 AM

Testimony for CPH on 2/21/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
R Laree McGuire	Individual	Support	No

Comments:

This Bill must pass to ensure that requests for reasonable accommodations by people with pets are being evaluated by licensed professionals who have actually examined and evaluated the patient/resident **and then determined**--based on that evaluation--whether the patient's need for the assistance animal, if any, is related to the disability at issue. This should reduce the level of fraud that is currently being perpetrated on associations that have "no pet" restrictions as to all residents.

Mahalo for your consideration.

**SB-2200**

Submitted on: 2/20/2020 10:13:09 PM

Testimony for CPH on 2/21/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cori Chang	Individual	Support	No

Comments:

**SB-2200**

Submitted on: 2/20/2020 7:58:27 PM

Testimony for CPH on 2/21/2020 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
JOY SCHOENECKER	Individual	Support	No

Comments:

- The licensed professional preparing the request for reasonable accommodation will be required to meet with and diagnose the person seeking the accommodation.
- The licensed professional preparing the request will be required to make written findings as to the resident's disability and whether the need for an assistance animal is related to that disability.

I request that the bill be amended to include sanctions against the licensed professional for failure to comply, e.g., successive fines from \$500 to \$1,000 or non-compliance to be considered in connection with License renewals.

For these reasons, I respectfully requests that you pass out this bill with an amendment imposing sanctions for non-compliance. Thank you for the opportunity to testify on this matter.





## 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 21, 2020

**LATE**

### TESTIMONY TO THE SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION, AND HEALTH AND JUDICIARY

#### Senate Bill 2200 – Relating to Fair Housing Reasonable Accommodations

The Disability and Communication Access Board (DCAB) offers comments regarding Senate Bill 2200, which, if enacted, will require licensed health care providers to make written findings whether a patient or client has a disability and whether the need for an assistance animal or service animal is related to the disability so long as certain circumstances are present. It will also require the Hawaii Civil Rights Commission, in consultation with the Department of the Attorney General, to adopt rules and prescribe forms.

By referencing licensed practitioners under Hawaii Revised Statutes, this bill proposes that documentation must be provided by a physician, osteopath, mental health counselor, nurse, optometrist, psychologist, or social worker licensed in Hawaii. This requirement will impose a burden on persons with disabilities statewide who have recently relocated to Hawaii, part-time/seasonal residents, and Hawaii residents who have out-of-state medical providers because they will be required to seek a Hawaii licensed practitioner to document their disability. Thus, this requirement would make Hawaii law more restrictive than the Federal Fair Housing Act (FHA). Therefore, the requirement should not be imposed upon the aforementioned persons with disabilities who, under the FHA, only need a licensed practitioner to indicate to a housing provider that such persons need a service animal or assistance animal that will alleviate an aspect of their disability.

Thank you for the opportunity to offer comments.

Respectfully submitted,

KIRBY L. SHAW  
Executive Director