



HAWAI'I CIVIL RIGHTS COMMISSION

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February 24, 2011
Conference Room 325
2:15 p.m.

To: The Honorable Gilbert Keith-Agaran, Chair
Members of the House Committee on Judiciary

From: Coral Wong Pietsch, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 601, H.D.1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state 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 because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC has several concerns about H.B. 601, HD1 which purports to conform state law to recently finalized U.S. Department of Justice (DOJ) rules regarding service animals that apply to Title II of the Americans with Disabilities Act (ADA), relating to government services and programs, and Title III of the ADA, relating to public accommodations. Initially, it must be noted that the DOJ rules do **not** apply to: a) Title I of the ADA, relating to employment; b) the federal Fair Housing Act (FHA) relating to housing situations; or to c) the federal Air Carriers Access Act (ACAA). ADA Title I employment provisions, the FHA and the ACAA have broader definitions and interpretations of "service animal" and reasonable accommodations for persons with disabilities under those laws can include the use both service animals and emotional support/comfort animals.

In addition, state law can provide more protections than federal law. See, California Federal Sav. and Loan Ass'n v. Guerra, 479 U.S. 272, 107 S. Ct. 683 (1987) (federal law is a “floor” beneath which protections against discrimination should not drop, rather than a “ceiling” above which protections cannot rise under state discrimination laws.) While the rules regarding service animals under the ADA Titles II and III narrowly define “service animals” to include dogs (and miniature horses) only, state statutes regarding reasonable accommodations for persons with disabilities in public accommodations may be interpreted more broadly.

While the HCRC does not oppose conforming H.R.S. §347-13 to the ADA Titles II and III administrative rules, the ADA Title II and III rules do not necessarily control interpretation of the state law which prohibits discrimination in places of public accommodations, H.R.S. Chapter 489. Accordingly, Section 1 of the bill should be amended to clarify that the purpose of the bill is to conform the affirmative provisions of H.R.S. §347-13, and not “state law” generally, to the public conveyances provisions of Title II and III of the ADA. The Disability and Communications Access Board (DCAB) has drafted amendments to HB 601, HD1 that address these and other concerns. For the reasons stated above, the HCRC supports and urges adoption of DCAB’s proposed amendments in a H.D.2.

In Section 4 of the bill, which deals with service animals and comfort animals in the fair housing context, the Commission also opposes limiting the definition of “service animal” to dogs only. While the Federal Fair Housing Act (FHA) does not make specific reference to service or comfort animals as reasonable accommodations, HUD, in its Handbook regarding subsidized multi family housing programs, and in a recent memo to its regional directors, states that that reasonable accommodations under the FHA can include “assistance animals”. Assistance animals are defined as animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. HUD also states that the ADA Title II and III definitions of service animals only as dogs does not apply to the FHA. See, HUD Handbook 4350.3 § 2-44 (2009), Memorandum for All FHEO Regional Directors dated February 17, 2011, attached.

Similarly, the definition of “service animal” under H.R.S. chapter 515 is not limited to exclusively to dogs, and a person with a disability may request a reasonable accommodation in the form of an assistance animal, such as a comfort or emotional support animal which may or may not be a “service animal.” The HCRC, DCAB and members of the Hawai‘i Legislative Action Committee of the Community Associations Institute recently met to draft language for SB 1302, SD1 to clarify that the reasonable accommodations provisions under H.R.S. §515-3 are consistent with the FHA and HUD and caselaw interpretations of the FHA and may include the use of assistance animals. This language has been incorporated into SB 892, SD2, the companion bill to this measure. While this draft language is still a work in progress, we urge this committee to adopt it in Section 4 of this bill so that it will be consistent with amendments proposed in SB 892, SD2. Attached also is a copy of that draft language.

STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS.

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

SECTION 1. The purpose of this Act is to clarify that the reasonable accommodations provisions in state fair housing law are consistent with the federal Fair Housing Act [FHA] and case law and interpretations of the FHA. ~~[clarifying that a request for a reasonable accommodation may include the use of a service animal and by defining the term "service animal".]~~ Nothing in this act shall be construed to afford a person with a disability fewer rights or remedies than the federal Fair Housing Act of 1968, as amended by the Fair Housing Amendments of 1988 [FHAA] and its implementing regulations, or state law relating to fair employment and housing as it existed prior to the enactment of this act, nor to diminish the rights of providers of housing accommodations under those federal and state laws.

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follow:

"§515-3 **Discriminatory practices.** (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of

race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection [~~therewith;~~] with a real estate transaction;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- (6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, [~~e~~] to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect [~~thereto;~~] to a real estate transaction;
- (7) To offer, solicit, accept, use, or retain a listing of real

property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection ~~[therewith,]~~ with a real estate transaction;

~~[(8) To refuse to engage in a real estate transaction with a person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a guide dog, signal dog, or service animal; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by these animals. For the purposes of this paragraph:~~

~~"Blind" shall be as defined in section 235-1;~~

~~"Deaf" shall be as defined in section 235-1;~~

~~"Guide dog" means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;~~

~~"Reasonable restriction" shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the "reasonableness" of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a "reasonable restriction" may require the owner of the service animal, guide dog, or signal dog to comply with one or more of the following:~~

- ~~(A) Observe applicable laws including leash laws and pick-up laws;~~
- ~~(B) Assume responsibility for damage caused by the dog; or~~
- ~~(C) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.~~

~~The foregoing list is illustrative only, and neither exhaustive nor mandatory;~~

~~"Service animal" means any animal that is trained to provide those life activities limited by the disability of the person;~~

~~"Signal dog" means any dog that is trained to alert a deaf person to intruders or sounds;~~

~~(9)]~~ (8) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection, the causative agent of acquired immunodeficiency syndrome;

~~(10)]~~ (9) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises~~[-A]~~; provided that a real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

~~[-(11)-]~~ (10) To refuse to make reasonable accommodations~~[, including the use of a service animal,]~~ in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation; provided that when making a reasonable accommodation for the use of an [service] animal, reasonable restrictions may be imposed; [regarding excessive noise or other problems caused by the animals,]

~~[-(12)-]~~ (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:

- (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
- (B) With respect to housing accommodations with an accessible building entrance:
 - (i) The public use and common use portions of the housing accommodations are accessible to and usable by ~~[disabled]~~ persons~~[+]~~ with disabilities;
 - (ii) Doors allow passage by persons in wheelchairs; and
 - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow

installation of grab bars; and kitchens and
bathrooms are accessible by wheelchair; or

~~[(13)]~~ (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of [such] access, membership, or participation.

~~[(b) For purposes of this section, any restriction that allows any owner or person to refuse to negotiate or engage in a real estate transaction or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses a service animal shall not be a reasonable restriction. The reasonableness of a restriction shall be examined by giving due consideration to the needs of a reasonably prudent person in the same or similar circumstances. Depending on the circumstances, a reasonable restriction may require the owner of a service animal to:~~

- ~~(1) Observe applicable laws including leash laws and pick-up laws;~~
- ~~(2) Assume responsibility for damage caused by the service animal;~~
- ~~or~~
- ~~(3) Have the housing unit cleaned upon vacating by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances;~~

~~provided that the items listed in paragraphs (1) through (3) are illustrative only, and neither exhaustive nor mandatory.~~

~~(c) For the purposes of this section:~~

~~—"Service animal" means any animal that is trained to provide those life activities limited by the disability of the person."~~]

**HUD Handbook 4350.3:
Occupancy Requirements of Subsidized
Multifamily Housing Programs**

Example – Reasonable Accommodation that Does Not Create an Undue Financial and Administrative Burden

An applicant with a mobility impairment wants to live in a dwelling unit in a particular rental housing property. The owner requires all tenants to hand-deliver their rent to the rental office. The unit is almost a block away from the rental office, but there is a mailbox located just a few yards from the unit entry door. Under 24 CFR 100.204, the owner or manager of an apartment complex must permit the applicant to mail the rent payment to the rental office. This policy accommodation would not pose an undue financial and administrative burden on the owner and allows the applicant to have equal opportunity to use and enjoy the unit.

- E. For other guidance on how to determine whether a reasonable accommodation would result in an undue financial and administrative burden, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.

2-44 Assistance Animals as a Reasonable Accommodation

- A. Assistance animals are not pets. They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as "service animals," "assistance animals," "support animals," or "therapy animals" – perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.
- B. A housing provider may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, *no special training is required*. The question is whether or not the animal performs the disability-related assistance or provides the disability-related benefit needed by the person with the disability.
- C. A housing provider's refusal to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:
1. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation,

2. The animal would cause substantial physical damage to the property of others,
 3. The presence of the assistance animal would pose an undue financial and administrative burden to the provider, or
 4. The presence of the assistance animal would fundamentally alter the nature of the provider's services.
- D. The fact that a person has a disability does not automatically entitle him or her to an assistance animal. There must be a relationship between the person's disability and his or her need for the animal.
- E. A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, at that time, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises.

Subsection 5: Additional Fair Housing Act Requirements

2-45 Fair Housing Act Basic Accessibility Requirements

The Fair Housing Act requires that all buildings designed and constructed for first occupancy after March 13, 1991 meet certain basic accessibility requirements. This requirement applies to all new construction, regardless of the presence of federal financial assistance. See 24 CFR 100.205. Owners of properties that should have been constructed in accordance with these requirements but were not, are obligated to retrofit their units to bring them into compliance with the Act. If a tenant in one of these properties requests modifications to a unit that should have been made at the time of construction, the owner has an affirmative obligation to make and pay for those modifications as part of its original obligation to conform to the Fair Housing Act design and construction requirements.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

February 17, 2011

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM FOR: All FHEO Regional Directors
Regional Counsel

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement
and Programs, ED

SUBJECT: New ADA Regulations and Assistance Animals as
Reasonable Accommodations under the Fair Housing Act
and Section 504 of the Rehabilitation Act of 1973

I. Purpose

This memo explains that the Department of Justice's (DOJ) recent amendments to its Americans with Disabilities Act (ADA) regulations¹ do not affect reasonable accommodation requests under the Fair Housing Act (FHAct) and Section 504 of the Rehabilitation Act of 1974 (Section 504). The DOJ's new rules limit the definition of "service animal" in the ADA to include only dogs. The new rules also define "service animal" to exclude emotional support animals. This definition, however, does not apply to the FHAct or Section 504. Disabled individuals may request a reasonable accommodation for assistance animals in addition to dogs, including emotional support animals, under the FHAct or Section 504. In situations where both laws apply, housing providers must meet the broader FHAct/Section 504 standard in deciding whether to grant reasonable accommodation requests.

II. Definitions of Service Animal

The DOJ's new ADA rules define "service animal" as 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 new rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 35); Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 36).

work or tasks for the purposes of this definition.” Thus, trained dogs are the only species of animals that may qualify as service animals under the ADA (there is a separate provision regarding miniature horses) and emotional support animals are expressly precluded from qualifying as service animals.

Neither the FHAct, Section 504, nor HUD’s implementing regulations contain a specific definition of the term “service animal.” However, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHAct and Section 504. The new ADA regulation does not change this FHAct/Section 504 analysis, and specifically notes, “[u]nder the FHAct, an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the animal does not pose a direct threat.”² In addition, the preambles to the new rules state that emotional support animals do not qualify as service animals under the ADA but may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”³

III. Applying the Law

Under the FHAct and Section 504, individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise impose restrictions or prohibitions on animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Further, there must be a relationship, or nexus, between the individual’s disability and the assistance the animal provides. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.⁴

Under the ADA, the animal need only meet the definition of “service animal” to be covered by the law. No further test or reasonable accommodation analysis should be applied. An individual’s use of a service animal in an ADA-covered facility should not be handled as a request for reasonable accommodation. If an animal qualifies as a “service animal,” ADA-

² 75 Fed. Reg. at 56194, 56268.

³ 75 Fed. Reg. at 56166, 56240.

⁴ The request may also be denied if the specific animal in question poses a direct threat to the health and safety of others that cannot be reduced or eliminated by a reasonable accommodation or if the specific animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation.

covered entities may not restrict access to a person with a disability on the basis of his or her use of that service animal unless the animal is out of control and its handler does not take effective action to control it or if the animal is not housebroken. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

The new ADA definition of “service animal” applies to state and local government services, public accommodations, and commercial facilities; the FHAct covers housing services and facilities; and HUD’s Section 504 regulations apply to all recipients of HUD-funds. Some types of entities, such as rental offices and housing authorities, are subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct or Section 504. Entities must ensure compliance under all relevant civil rights laws. Compliance with the ADA’s regulations does not ensure compliance with the FHAct or Section 504. An entity that is subject to both the ADA and the FHAct or Section 504 must permit access to ADA-covered “service animals” and, additionally, apply the more expansive assistance animal standard when considering reasonable accommodations for persons with disabilities who need assistance animals that fall outside the ADA’s “service animal” definition.

IV. Conclusion

The ADA regulations’ revised definition of “service animal” does not apply to reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling, common areas of a dwelling, or participate in, or benefit from, any housing program receiving Federal financial assistance from HUD, unless an exception applies.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 24, 2011

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

House Bill 601, HD1 - Relating to Service Animals

The Disability and Communication Access Board supports the intent of House Bill 601 with significant amendments.

It is our intent that this bill conform to §143-4, Hawaii Revised Statutes (HRS), regarding dog licensing to applicable provisions of the Americans with Disabilities Act; §347-13, HRS to the recently issued Americans with Disabilities Act rules for Titles II and III, effective March 15, 2011 and §515, HRS to the current Fair Housing Act as it relates to the issue of service animals.

We prefer the contents of the companion bill, Senate Bill 892, SD2, as it was passed out of the Senate Judiciary Committee yesterday, February 23, 2011. We ask that you insert the contents of that bill as House Bill 601, HD2.

Thank you for the opportunity to testify.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 24, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee on Judiciary
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 601, HD 1, Relating to Service Animals

The Equal Opportunity Office of the City & County of Honolulu, which is housed within the Department of Human Resources, urges the Committee to consider the testimony provided by the Disability and Communication Access Board (DCAB) with respect to House Bill No. 601, HD 1. The DCAB has offered for consideration significant revision to the subject Bill as your committee attempts to bring subject state law into conformance with the recently issued Americans with Disabilities Act (ADA) rules for Titles II and III, effective March 15, 2011, and the current Fair Housing Act as it relates to service animals.

In addition to DCAB's recommendations, we respectfully request that proposed changes to sections of the Bill addressing H.R.S. 347-13 be incorporated as follows:

- 1) In all references relating to persons with disabilities, consideration should be given to including all persons with disabilities and not just those with "physical" disabilities. This can be accomplished by simply removing the word "physical" before the words disabilities/disability.

Service animals are used by persons with all kinds of disabilities, not just those with physical disabilities. The U.S. Department of Justice (U.S. DOJ) rules regarding service animals found at 28 Code of Federal Regulations Part 35 at 35.104 recognized this in the definition of a service animal as "...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." [emphasis added] The definition continues with language that describes "[t]he work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or

sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors."

- 2) Delete text in H.R.S. 347 (c) (1) that refers to a person who "suffers from" a disability to indicate that the person "has" a disability. [see attached suggested revisions applicable to proposed H.R.S. 347-13 (c) (1)]
- 3) Remove completely H.R.S. 347 (c) (2) which requires a person with a disability to obtain a statement from their physician or physician assistant attesting to the person with a disability's need to use a life jacket or other flotation device while in a public swimming pool.

The ADA prohibits discrimination against individuals with disabilities to include exclusion from participation in or denial of or benefits, services, programs, etc. due to disability. A requirement that an individual prove their disability or need to use a life jacket or other flotation device in a public swimming pool is inconsistent with the ADA and imposes a requirement on the disabled individual attempting to enjoy a public swimming pool that is not similarly imposed on other pool users.

Existing rules found at 28 Code of Federal Regulations Part 35 at 35.130 (b) (7) state that "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." This provision allows a public entity to prohibit the use of life jackets or flotation devices in a swimming pool provided that such a rule or policy is reasonably modified when a person with a disability requires the use of such items while using the swimming pool.

Suggested below is the revision applicable to proposed H.R.S. 347-13 (b) and (c). Thank you for the opportunity to testify.

Suggested revision of H.R.S. 347-13:

(b) Every person with a disability shall have the right to be accompanied by a service dog, especially trained for the purpose of assisting the person with a disability, in any of the places listed in subsection (a) without being required to pay an extra charge for the service dog; provided that the person with a disability shall be liable for any damage done to the premises or facilities by such dog. No such dog shall be considered dangerous merely because it is unmuzzled.

The Honorable Gilbert S.C. Keith-Agaran
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(c) Every person with a disability shall have the right to use a life jacket or other flotation device in a public swimming pool; provided that the person has a disability or condition that requires the use of a life jacket or other flotation device.

(1) Removed

(2) Removed

Yours truly,



for Noel T. Ono
Director

JUDtestimony

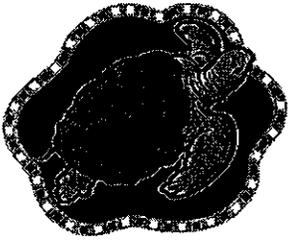
From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 23, 2011 1:28 PM
To: JUDtestimony
Cc: plahne@alf-hawaii.com
Subject: Testimony for HB601 on 2/24/2011 2:15:00 PM

Testimony for JUD 2/24/2011 2:15:00 PM HB601

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Philip L Lahne
Organization: Community Associations Institute - Legislative Action Committee
Address:
Phone:
E-mail: plahne@alf-hawaii.com
Submitted on: 2/23/2011

Comments:

The Community Associations Institute ("CAI") is a non-profit national and statewide organization whose members include condominium associations, planned community associations, residential cooperatives, homeowners, managing agents, and others involved in creating, managing, servicing, and living in common interest communities. The Hawai'i LAC is committed to protecting the rights of genuinely handicapped and disabled persons and supports HB601HD1 inasmuch as the amendments made by the Committee on Housing addressed CAI-LAC's concerns with identifying untrained "comfort animals" as a separate or special class of service animal by deleting all references to comfort animals from the bill.



Francine Mae Aona Kenyon

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HOUSE COMMITTEE ON JUDICIARY

**Representative Gilbert S. C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice-Chair**

Thursday, February 24, 2011 at 2:15 pm in Conference Room 325

HOUSE BILL NO. 601, HOUSE DRAFT 1, RELATING TO SERVICE ANIMALS

Aloha, my name is Francine Mae Aona Kenyon. . I am an active, strong Deaf advocate for the civil rights of people with disabilities including those who are deaf, hard of hearing, and deaf-blind in the State of Hawaii with many hats. I have been testifying for more than 20 years on various bills.

I support House Bill No. 601, House Draft 1 that make changes to state law relating to public conveyances to the Americans With Disabilities Act, using the wording, "Persons with Disabilities." I thank you for the changes but should we need to clarify the definitions of "Persons with disabilities" and "service dogs"? Taken from Senate Bill No. 892, Senate Draft 1, the statement that says, "Service dog" 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" is a perfect description of "a person with disability" and "service dog."

I have a great confidence in you for making the wise decision-making. I recommend you pass House Bill No. 601, House Draft 1 with the recommendations from Disability and Communications Access Board.

Sincerely,

Francine Mae Aona Kenyon
Deaf Advocate