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April 11, 2017

Honorable Mark Stone
Chair, Assembly Judiciary Committee
Capitol Building, Room 3146
Sacramento, CA 95814

RE: AB 1569 (CABALLERO) – OPPOSE

Dear Assembly Member Stone:

Disability Rights California, a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, **opposes AB 1569**. The Legislature should wait before adopting legislation that seeks to define the parameters of the very important area of reasonable accommodations for persons with disabilities who use and need support animals within their housing until the California Fair Employment and Housing Council (Council) promulgates the final regulations currently under consideration on this issue. Moreover, AB 1569 would create unnecessary barriers for disabled persons seeking housing and would undermine important legal protections afforded to disabled Californians by both state and federal fair housing laws.

The federal Fair Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require landlords to make reasonable accommodations for individuals with disabilities when the accommodations are necessary to provide the individuals with equal opportunity to use and enjoy their housing. Under the Fair Housing Act, the federal Department of Housing and Urban Development (HUD) disseminates regulations and guidance that provide broad support for an individual's right to have a support animal and prohibits housing providers from placing unnecessary restrictions on this right.

The Legislature Should Wait for the Adoption of Final DFEH Regulations Before Acting

The Council is in the process of drafting regulations governing reasonable accommodations in housing of service and emotional support animals (referred to as assistive or assistance animals by DFEH). The Council's draft regulations address the identical issue of landlord verification of individuals' need for assistance animals that AB 1569 addresses.

The Council's administrative rulemaking process has allowed extensive public comment and has permitted all stakeholders to provide comment on the appropriate and lawful scope of issues surrounding reasonable accommodations for persons with disabilities needing assistance animals. Additionally, the rulemaking process has allowed HUD to review and provide important feedback on these proposed regulations. The proposed draft regulations are also more comprehensive than just the verification requirements proposed in AB 1569 and employ a more inclusive regulatory scheme to making reasonable accommodations for individuals who use assistance animals. To that extent, AB 1569 is piecemeal and incomplete compared to the more complete nature of the proposed regulations.

AB 1569 is Unduly Restrictive, Conflicts with FEHA, and is Preempted by the Federal FHA

There are numerous provisions of Civil Code 54.1 that AB 1569 would amend that have negative consequences for persons with disabilities. Proposed 54.1(b)(3)(C)(i) requires that a verification letter be from a party located in the United States. This requirement is unreasonably restrictive and it may be a problem for someone who recently moved to California from another country, or who lives part of the time in another country and receives medical care there. The FHA does not have a requirement that the letter come from the United States. Any requirement that is narrower than the FHA is considered a violation of the Act.

For the purpose of verification of need for assistance animals the FHA only requires that the person providing verification be familiar with the individual's disability and need for the animal. This does not necessarily require an individualized examination prior to each and every verification. The verification can be based on a long-standing familiarity with the individual, with updates as necessary by phone or email. Technology has increased the ability to stay connected with a doctor and communications

regarding conditions and treatment can take place online by phone, email, or even video conferencing. This is a key problem with proposed 54.1(b)(3)(C)(i) and 54.1(b)(3)(C)(ii)(III) because they would require the verification come from someone who has conducted an “individualized examination” of the tenant. Once again this requirement would make California law narrower than federal law and would violate the FHA.

Two provisions in AB 1569 would restrict a persons’ ability to obtain verification from an online source or from a business operating primarily to provide certifications for support animals as a reasonable accommodation. Provision 54.1(b)(3)(C)(i) states that the third party shall not be operating primarily as a business to provide certifications for persons requesting verification of animals requested as reasonable accommodations and 54.1(b)(3)(C)(ii)(II) would make any certificate, registration, emotional support animal letter, letter of prescription, doctor’s or any kind of note or letter obtained from an online source invalid. Both of these provisions are overly vague and restrictive.

These provisions provide no guidance about the scope of what kind of business is improperly operating to primarily provide certifications or likewise define an improper online source. If a therapist regularly uses emotional support animals in their treatment of patients, are they then a business operating primarily to provide certifications for support animals? Most healthcare providers allow patients to contact their doctors through portals online. If a person requests an emotional support animal from the therapist they have been seeing through the online portal and receives an email, is that considered an online source that would not be accepted? Instead of clarifying this issue, these provisions just lead to confusion. These provisions are unduly restrictive and therefore conflict with the FHA.

Changes to Reasonable Accommodations Requirements Should Be Made Under the Fair Employment and Housing Act, Not the Disabled Persons Act (Civil Code 54.1)

AB 1569 attempts to amend Section 54.1 of the Civil Code, Disabled Persons Act, relating to disability rights. Reasonable accommodations in relation to support animals in housing are regulated under FEHA and any changes to the law should be made in those statutes. Attempting to change the civil code to adopt more stringent requirements would put it in conflict with FEHA as well as the FHA.

We need more accessible housing options for people with disabilities who require assistance animals, not fewer. AB 1569 will limit the housing available to those persons. The thoughtful and comprehensive regulatory process underway to interpret FEHA by DFEHC is properly balancing the important need for accommodating disabilities in housing with those of landlords who seek property protections. For these reasons, we oppose this bill. Please contact me if you have any questions about our position.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis Child". The signature is fluid and cursive, with the first name "Curtis" and last name "Child" clearly distinguishable.

Curtis Child
Legislative Director
Disability Rights California

cc: Honorable Anna Caballero, California State Assembly
Michele Altawil, Office of Assembly Member Caballero
Honorable Chair and Members, Assembly Judiciary Committee
Anthony Lew, Staff Counsel, Assembly Judiciary Committee