

Date of Hearing: May 3, 2016

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2760 (Mathis) – As Amended April 25, 2016

**SUBJECT:** LANDLORD AND TENANT: SUPPORT ANIMALS

**KEY ISSUES:**

- 1) SHOULD STATE LAW ALLOW LANDLORDS TO PROHIBIT TENANTS FROM HAVING SUPPORT ANIMALS ON THE RENTAL PROPERTY IN LIKELY VIOLATION OF FEDERAL FAIR HOUSING LAW AND OTHER LAWS WHEN DOING SO COULD JEOPARDIZE MILLIONS OF DOLLARS IN FEDERAL HOUSING FUNDS TO CALIFORNIA?
- 2) SHOULD STATE LAW ALLOW NEW GROUNDS FOR EVICTION AGAINST DISABLED PERSONS WITH LEGITIMATE SUPPORT ANIMALS, INCLUDING FOR REASONS THAT ARE VAGUE OR NOT UNDER THE CONTROL OF THE TENANT?

**SYNOPSIS**

*This controversial bill, sponsored by the California Association of Realtors, would allow landlords, as a condition of a lease, to prohibit a tenant or prospective tenant from possessing a support animal, as defined, and creates new grounds for eviction specific to tenants with support animals. The bill would codify a new definition of “support animal” that excludes service animals, as that term is already defined under state and federal law, but that would require the support animal to be prescribed by a California licensed physician or mental health professional in order to treat a mental or emotional illness or disability. Proponents of this bill, primarily apartment associations, argue that the bill is necessary to respond to an epidemic of apartment tenants trying to get around a landlord's "no pets" policy by claiming pets are support animals, while many of these unauthorized animals damage the property or threaten the safety of other tenants or animals.*

*Numerous state and federal laws, including the Federal Fair Housing Act and the California Fair Employment and Housing Act, require landlords to make reasonable accommodations for individuals with disabilities when the accommodations are necessary to provide the individuals with the equal opportunity to use and enjoy their housing. California courts have previously held that a disabled person is entitled to a reasonable accommodation for a support animal. Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Comm. (2004) 121 Cal. App. 4th 1578. Settled case law, as well as federal HUD regulations and guidance, provide broad support for an individual's right to have a support animal and prohibit housing providers from placing unnecessary restrictions on this right. Opponents of the bill, including advocates for tenants, disabled persons, and animal welfare organizations, contend that this bill creates a mechanism for landlords to deny disabled tenants reasonable accommodations in housing to which they are entitled under federal and state law.*

*By ignoring the fact that support animals—not just service animals—are entitled to reasonable accommodation, this bill conflicts with federal law and appears to facilitate illegal discrimination against disabled persons with support animals. In addition, the bill contains a*

*number of other provisions that appear to conflict with federal fair housing law, including the prescription requirement, the authorization to charge extra fees or deposits for the support animal, among other things. These provisions, which conflict with federal law are especially troubling, opponents contend, because they could jeopardize California's ability to receive millions of dollars of federal housing funds from the Department of Housing and Urban Development (HUD). Specifically, if California were to enact laws later found to be out of compliance with federal fair housing standards, the state would likely lose its certification by HUD that provides the State Department of Fair Employment and Housing (DFEH) with millions of dollars in funding to carry out its fair housing enforcement duties. For all of these reasons, a better alternative than passing this bill would be to support the CA Fair Employment and Housing Council's ongoing efforts to develop official rules and regulations about support animals through the administrative rulemaking process, which while slower and more deliberate (given the public comment and hearings involved) is assured of producing a fair solution that does not violate federal fair housing law as this bill unfortunately appears to do on many levels.*

**SUMMARY:** Allows landlords, as a condition of a lease, to prohibit a tenant or prospective tenant from possessing a support animal, as defined, and creates new grounds for eviction specific to tenants with support animals. Specifically, **this bill:**

- 1) Provides that a residential lease may require a tenant who possesses a support animal on the rented premises or associated common areas to be subject to the following conditions:
  - a) The tenant must notify, and receive approval from, the landlord prior to bringing the support animal on the rented premises or associated common areas.
  - b) The support animal must be housebroken.
  - c) The support animal may not disturb the quiet enjoyment of the premises by other tenants or pose a threat to other tenants or their property.
  - d) The presence of the animal may not jeopardize the availability or price of insurance.
- 2) Provides that if a tenant or prospective tenant satisfies the conditions specified above in Item 1), above, then he or she shall not be prohibited from possessing a support animal on the rented premises or associated common areas.
- 3) Provides that if a residential lease contains the conditions specified above in Item 1), then a breach of any one of the conditions constitutes a breach of the lease, subjecting the tenant to eviction.
- 4) Clarifies that these provisions shall not affect the ability or rights under any law to possess a service animal, nor affect the amount of, or ability to pursue, a security deposit, including a pet deposit, under any law.
- 5) Defines "support animal" to mean a support dog, companion animal, emotional support animal, or assistive animal that is prescribed by a California licensed physician or licensed mental health professional in order to treat a mental or emotional illness or mental or emotional disability.

- 6) Defines "service animal" to include guide dogs, signal dogs, service dogs, and service animals, as those terms are defined under various sections of existing law, and further provides that a support animal does not include a service animal.

**EXISTING FEDERAL LAW:**

- 1) Requires reasonable accommodations in rules, policies, practices, or services when the accommodations are necessary to provide a disabled individual equal opportunity to use and enjoy the dwelling. (24 CFR 200.204.)
- 2) Pursuant to the Fair Housing Act (FHA), defines "discriminatory housing practice" as including, among other things, the refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations are necessary to afford an individual with a disability equal opportunity to use or enjoy the dwelling. (42 U.S.C. Section 3604.)
- 3) Defines a "service animal" as any dog or housebroken miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability and expressly provides that comfort, emotional support, and companionship animals are not services animals. (28 CFR 35.104 and 28 CFR 35.136.)
- 4) Prohibits public entities from asking about the nature of an individual's disability, but permits public entities to ask whether an animal is required because of a disability and what work or tasks the animal has been trained to perform. (28 CFR 35.136 (f).)
- 5) Requires housing providers to make reasonable accommodations in housing with disabilities, including granting an exception to a "no pets" policy to accommodate the need for a support animal. (*Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission* (2004) 121 Cal. App.4<sup>th</sup> 1578.)
- 6) Pursuant to the Americans with Disability Act (ADA), provides that a qualified individual with a disability shall not be excluded or denied benefits, services, programs, or activities from a public entity due to the individual's disability. (42 U.S.C. Section 12132.)
- 7) Pursuant to Section 504 of the Rehabilitation Act of 1973 ("Section 504"), provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. (29 U.S.C. Section 794.)

**EXISTING STATE LAW:**

- 1) Declares that the opportunity to seek, obtain, and hold housing without discrimination based on certain specified characteristics including race, religion, gender identity, sexual identity, and disability is a civil right. (Government Code Section 12921. All further references are to this code unless otherwise stated.)

- 2) States that federal law provides a floor for protecting individuals with disabilities whereas the law of this state provides additional protection, and defines physical disability, mental disability, and medical condition broadly. (Sections 12926.1 (a), 12926 (b), and 12955.6.)
- 3) Provides “discrimination” includes, among other things, the refusal to make reasonable accommodations in rules, policies, practices, or services when they are necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. (Section 12927.)
- 4) Prohibits discrimination based on, among other things, race, religion, gender identity, sexual orientation, and disability in housing accommodations and specifies discrimination in housing accommodations is against public policy. (Section 12955.)
- 5) Prohibits any person from printing or publishing a statement relating to the sale or renting of a housing accommodation expressing preference for or discriminating against a group based on, among other things, race, gender, or disability. (Sections 12955 (c).)
- 6) Provides intent to discriminate against an individual based on, among other things, a disability is considered to be a violation of the Fair Housing Amendments Act and can be proven by circumstantial evidence. (Section 12955.8 (a).)
- 7) States a landlord can only make a claim of payment or deposit for the amount that is reasonably necessary to remedy a tenant’s defaults in the payment of rent, to repair damages to the premise caused by the tenant, and to clean the premise after the tenancy has been terminated. (Civil Code Section 1950.7 (c).)
- 8) Provides that any person renting, leasing, or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises. (Civil Code Section 54.1.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** This controversial bill, sponsored by the California Association of Realtors, would allow landlords, as a condition of a lease, to prohibit a tenant or prospective tenant from possessing a support animal, as defined, and create new grounds for eviction specific to tenants with support animals. The bill would also codify a new definition of “support animal” that would require the support animal to have been prescribed by a California licensed physician or mental health professional in order to treat a mental or emotional illness or disability. According to the Realtors:

Too often, landlords are subjected to untrained animals being brought onto their property without proper notice. Many of these animals cause extensive property damage and threaten the safety of other tenants and their service animals. AB 2760 will require the furnishing of a tenant’s medical need for a companion animal prior to its permittance with a place of residence that limits pets. This bill will help to mitigate the damages caused by unregistered companion animals while protecting the rights of landlords and tenants.

**Background on "service animals" vs. "support animals."** According to the author, and as stated in the recent legislative findings that were amended into the bill, "[S]ervice animals are a

special class of animals uniquely deserving of protections and accommodations in law, and are already clearly defined in California law and in federal law. . . [while] so-called “support,” “companion,” or “emotional support” animals are not clearly defined in law, and their appropriate use in the context of rental housing requires clarification.”

The author is partially correct in that the definition of a service animal is clearly defined in state and federal law. The bill itself defines the term "service animal" by incorporating several statutory definitions from elsewhere in the California Codes, namely:

- (1) "service dog" under Health & Safety Code Section 113903 ("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");
- (2) "guide dog" under Civil Code Section 54.1 ("any guide dog that was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336)");
- (3) "signal dog" under Civil Code Section 54.1 ("any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds."); and
- (4) "service dog" under Civil Code Section 54.1 ("any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.")

By contrast, the bill defines a "support animal" to mean "a support dog, companion animal, emotional support animal, or assistive animal that is prescribed by a California licensed physician or licensed mental health professional in order to treat a mental or emotional illness or mental or emotional disability." Finally, the bill states that a support animal does not include a service animal, that they are mutually exclusive categories.

Disability Rights California (DRC) disputes the author's contentions that "service animals" are clearly defined while "support animals" are **not** clearly defined under law. Contrary to the author's contention, DRC cites a number of cases where courts did not have any problem distinguishing between a service animal and a support animal. (See, e.g. *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission* (2004) 121 Cal.App.4<sup>th</sup> 1578, 1595-96, recognizing that the dog at issue "did not need special skills to ameliorate the effects of the defendants' disabilities [but it was] the dog's friendliness and ability to interact with humans that made it therapeutic here." See also *Janush v. Charities Housing Development Corp.* (2000) 169 F. Supp. 2d. at 1136-37.)

DRC contends that guidance developed by the U.S. Department of Housing and Urban Development (HUD) is fairly clear on this subject, although it does not correspond to the framework of definitions proposed by this bill. First of all, HUD guidance refers to a category of "assistance animals," which includes what some people term "support animals," "assistive animals," "therapy animals," and "service animals." ("*Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*," HUD FHEO Notice: FHEO-2013-01 (April 25, 2013), [hereafter "HUD FHEO Notice"]. According to HUD guidance, and most importantly for purposes of this bill, *these assistance animals are treated*

*alike with respect to the law of reasonable accommodations.* (Emphasis added.) The concept of assistance animals, including both service animals and support animals, is also important simply to distinguish them from mere pets. HUD guidance states:

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance 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 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. (HUD FHEO Notice, p.2.)

*Relationship to ADA; a separate definition for different purposes.* The Americans With Disabilities Act (ADA) adds complexity because it maintains a separate definition of "service animal", distinct from that which is part of the category of "assistance animals:" under FEHA. ADA regulations define "service animal" narrowly 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. (HUD FHEO Notice, p. 4.) The revised regulations also specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition"—in essence excluding support animals from this definition.

In addition to their reasonable accommodation obligations under the FHA and Section 504, housing providers may also have separate obligations under the ADA. The ADA definition of "service animal" applies to state and local government programs, services, activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHA and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHA or Section 504. Rather, in ADA-covered facilities, an animal need only meet the ADA definition of "service animal" to be allowed into a covered facility.

***By ignoring the fact that support animals—not just service animals--are entitled to reasonable accommodation, this bill conflicts with federal law and appears to facilitate illegal discrimination against disabled persons with support animals.*** This bill draws an unnecessary and incorrect distinction between service animals and support animals, which under federal fair housing law, reasonable accommodation is required to be made for both types of animals. Consequently this bill appears to facilitate illegal discrimination in housing against disabled persons with support animals and conflicts with federal law for the reasons described below.

Housing discrimination against persons with disabilities is prohibited both under federal law in the Fair Housing Act (FHA), and under comparable California laws: FEHA and the Unruh Act. Under the FHA, FEHA, and the Unruh Act, landlords must make reasonable accommodations for people with disabilities. (See Civil Code Section 54.) Reasonable accommodations are exceptions to rules or policies necessary in order to allow persons with disabilities to have an equal opportunity to use and enjoy a dwelling as compared to persons without disabilities. The

obligation to make reasonable accommodations includes a requirement that housing providers make exceptions to a “no-pets” policy to permit persons with disabilities to use and live with either a service or emotional support animal. (HUD FHEO Notice at p. 3.)

In the context of housing, the federal government uses a more inclusive definition of what types of animals must be allowed in housing as a reasonable accommodation under the Fair Housing Act. As mentioned above, the broader term used in housing is “assistance animal.” An assistance animal is “an animal that works, provides assistance, or performs tasks for the benefit of the person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a persons’ disability.” (HUD FHEO Notice, p.2.) This means that, in addition to service animals, emotional support animals and animals that provide some type of disability-related assistance are permitted as a reasonable accommodation in housing.

California courts have previously held that a disabled person is entitled to a reasonable accommodation for a support animal. (*Auburn Woods I Homeowners Assn. v. Fair Emp't & Hous. Com.* (2004) 121 Cal. App. 4th 1578.) In *Auburn Woods*, the court held a homeowners association had failed to provide the tenants with a reasonable accommodation by forcing them to remove their dog from the property. As noted by the National Housing Law Project, “Both settled case law and HUD regulations and guidance provide broad support for an individual’s right to a have a support animal and prohibits housing providers from placing unnecessary restrictions on this right.”

The premise of the bill appears to be that people having support animals may effectively be denied accommodations to, or evicted from, rental property because support animals, as that term is uniquely defined by this bill, are not protected or deserving of protection to the same extent that service animals are under existing law. This bill would allow a landlord, as a condition of a lease, to prohibit a tenant or prospective tenant from possessing a support animal, as defined. It would also create several new grounds for eviction specifically enforceable by a landlord against a tenant possessing a support animal, as defined. Instead of ensuring reasonable accommodations are made, however, this bill appears to do the opposite and potentially allows landlords to discriminate against and deny housing to disabled persons with support animals in violation of federal law.

***By violating federal fair housing law, this bill unfortunately jeopardizes California's ability to receive millions of dollars of federal funding from HUD.*** Federal fair housing provisions establish a legal framework regarding support animals. Opponents of the bill, as discussed above, believe that the standards under which a landlord may refuse a requested accommodation conflict with and are a significant departure from federal law. The Western Center on Law and Poverty (WCLP) notes that federal requirements in the area of fair housing are a floor, not a ceiling, and California cannot enact lower standards, as the bill does in several instances (to be discussed later). In addition to triggering needless litigation over lower conflicting requirements in state law, there is an even more pressing concern at stake when considering this bill, or any legislation like it that conflicts with federal standards. WCLP further explains:

If California were to be found out of compliance with federal fair housing standards, enacting this bill could jeopardize federal housing funds. The Department of Housing and Urban Development has the authority to certify a state or local fair housing agency with “substantial equivalency.” This certification means that a state “enforces a law that provides substantive rights, procedures, remedies, and judicial review provisions that are

substantially equivalent to the federal Fair Housing Act. Importantly, HUD certification provides the State Department of Fair Employment and Housing (“DFEH”) with millions of dollars in funding to carry out its fair housing enforcement duties-vital funds given California’s current budget crisis. Thus, DFEH is responsible for much of the fair housing enforcement in the state. This bill jeopardizes the state’s certification, which is renewed every five years. Without the certification and the funding that it provides, the DFEH would have to drastically reduce its enforcement of fair housing rights, not just for people with disabilities, but for all protected classes.

***The California Fair Employment and Housing Council to promulgate rules about support animals.*** Because of the jeopardy to federal funding potentially caused by this bill, many of the advocates opposing the bill urge the Committee to not derail the ongoing work of the California Fair Employment and Housing Council to draft and promulgate official rules and regulations about support animals. According to the National Housing Law Project:

Members of the California Fair Employment and Housing Council are currently undertaking a thoughtful and detailed process in drafting housing regulations that will apply to the entire state. The administrative procedure involves many stakeholders including landlord and realtor trade groups, tenant advocates, and residents. Reasonable accommodations and service animals are covered in the draft regulations and interested parties are part of an ongoing dialogue with the Council on these important issues. We request that the Assembly defer to the Council and the administrative process, of which a vast array of stakeholders are already involved, to promulgate rules about service animals.

According to WCLP, “expert stakeholders are already participating in a full dialog to develop effective and fair regulations. The bill unnecessarily short-circuits this process. Although some object that the process has been slow, this issue area is complex, and requires careful deliberation. A quick fix will cause more problems than it might solve.” Opponents contend that the California Fair Employment and Housing Council is essentially commanded to ensure the guidelines they develop for support animals meet the requirements for the substantial equivalence certification, and therefore (unlike this bill) California will not be at risk of losing millions of dollars in funding from the federal government.

***Additional ways in which this bill conflicts with federal housing law.*** In addition to the reasons already stated, numerous other provisions of AB 2760 appears to conflict with federal law. Opponents contend that housing providers following the rules established by this bill, were it to become law, would almost certainly find themselves violating federal fair housing law and anti-discrimination laws that protect disabled persons, and of course strengthening the degree to which the bill jeopardizes federal funding of DFEH. Several of the conflicting provisions are discussed below.

***Prescription requirement.*** This bill defines “support animal” to mean a support dog, companion animal, emotional support animal, or assistive animal that is prescribed by a California licensed physician or licensed mental health professional in order to treat a mental or emotional illness or mental or emotional disability. As such, the bill would require a tenant to obtain a prescription for a support animal from a licensed mental health care professional. DRC argues that there is no provision in California law for a “prescription” for a support animal, and that requiring such a “prescription”, even if it existed, would violate federal and state law, which allows a range of

methods, including letters from doctors and other reliable individuals to document the individual's disability and need for a support animal. The National Housing Law Project (NHLP), writing in opposition, further explains:

This requirement would place an enormous barrier on people with disabilities in obtaining a service animal and is contrary to HUD's extensive guidance on the issue. HUD's policy is that an individual requesting an accommodation may provide verification of his or her disability from a variety of sources. In fact, in both published guidance and HUD's Multifamily Handbook 4350.3, HUD does not limit disability verification to health care professionals. HUD provides that non-medical service providers, peer support group members, or other reliable third parties may verify the individual's disability. In addition, when a tenant under the age of 65 receives Social Security Disability Insurance benefits or Supplemental Security Income, the tenant should be able to self-certify as to the disability. Courts have even found that an individual's testimony is sufficient proof of a disability. (*Powers v. Kalamazoo Breakthrough Consumer Housing Coop.* (2009) WL 2922309.)

In short, it would appear that limiting verification to a licensed mental health care professional is unnecessarily restrictive, contrary to established federal law and HUD guidance, and may even have an adverse impact on low-income people with disabilities who may face barriers to accessing care by a licensed professional.

*Extra pet deposit or fee charged for support animal.* The bill was recently amended to state that its provisions shall not affect the ability or rights under any law to possess a service animal, nor affect the amount of, or ability to pursue, a security deposit, including a pet deposit, under any law. Prior to this amendment, the bill explicitly allowed a landlord to include the payment of an extra charge or security deposit for maintaining a support animal on the property. It is not clear what the intent of this new language is, but it should be noted that any provision that seeks to allow landlords to charge tenants a fee for their support animals would be a violation of federal and state fair housing laws. (*Fair. Hous. Of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, (2011) 778 F. Supp. 2d 1028 (denying landlord's motion for summary judgment on reasonable accommodation claim for waiver of pet deposit for emotional support animals).) Federal law allows housing providers to require applicants or residents to pay a pet deposit, but they may not require applicants and residents to pay a deposit for an assistance animal. (HUD FHEO Notice, p.3.) The author may wish to clarify the intent of this language to ensure that it does not violate federal rules barring charging a fee to keep a support animal.

*Threat to other tenants; jeopardy to availability of insurance.* The bill provides that as a condition of having a support animal, and also as a ground of possibly eviction, that the support animal may not disturb the quiet enjoyment of the premises by other tenants, pose a threat to other tenants or their property, or jeopardize the availability or price of insurance. The California Association of Realtors, sponsors of the bill, write, "Too often, landlords have been faced with untrained animals being brought onto their rental property without any notice to the landlord or property manager. These animals may cause extensive property damage to the rental unit and pose a threat to other tenants and their own service animals."

With respect to the possible threat to other tenants, federal law prohibits such a blanket rule as a precondition to any support animal. According to HUD guidance, any determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical

damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. (HUD FHEO Notice, p.3.) Breed, size, and weight limitations may not be applied to an assistance animal, and conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. (*Id.*)

Current law provides landlords only have to provide disabled tenants with accommodations if they are reasonable. The Western Center on Law and Poverty, opposing the bill, notes, “ If a support animal is a danger to others or poses an undue burden on the landlord, fair housing law already adequately addresses those issues in the context of the reasonableness of the requested accommodation. Giving landlords the authority to also evict tenants under these circumstances goes too far, and runs counter to the principles of fair housing.” Landlords do not have to provide accommodations if the support animal poses a threat to other tenants. Furthermore, current law already allows landlords to charge tenants for property damage caused by their animal, thereby protecting landlords from costs associated with problematic support animals.

With respect to the availability of insurance argument, this bill appears to create a justification for denial of housing and a corresponding ground for eviction based on a criterion that is altogether out of the control of the disabled person. As a prospective tenant seeking housing, how can a disabled person and his support animal possibly know how to comply with a condition that requires the animal to "not jeopardize the availability or price of the (landlord's) insurance?" The Humane Society of the United States (HSUS), writing in opposition, contends that the housing industry routinely uses insurance parameters as an excuse to restrict dogs by breed, but is unaware of any hard data or clarity on this issue from within the insurance industry. HSUS states that if insurance companies have policies which violate fair housing laws, those policies need to be addressed—but not at the expense of disabled tenants and their support animals.

**ARGUMENTS IN SUPPORT:** This bill is supported by a number of apartment associations, who contend that there is a growing epidemic of apartment tenants trying to get around a landlord's "no pets" policy. The San Diego County Apartment Association writes:

AB 2760 is being proposed due to the abuse by some apartment tenants of the use of so-called companion or support animals. . . . An example of a service animal is a seeing-eye dog which is specifically trained to assist an individual with a vision disability. Qualified service animals and the need to have one by a person with a disability means that a disabled resident enjoys certain federal civil right protected against discrimination.

Unfortunately there is a growing cottage industry of those who certify support or companion animals, which unlike service animals, are not trained to perform a certain task to assist in a person's disability. The problem has become significant in rental housing. AB 2760 will require a prescription from a mental health professional for the need of a companion or support animal and require that the animal and its owner abide by simple rules that protect the health and safety of the apartment property and other residents.

**ARGUMENTS IN OPPOSITION:** In addition to advocates for tenants and disabled persons, the Humane Society of the United States opposes this bill because it may lead to people having to choose between having a place to live and giving up their animals. According to HSUS:

We oppose AB 2760 because of its harmful interference with the human-animal bond, as well as its failure to acknowledge and account for the very powerful role companion animals play in assisting those with disabilities.

AB 2760 will force more people to choose between their home and their companion animals, who in this case serve a critical role as assistance animals. Assistance animals are a different legal classification from “pets” as defined in federal law. This bill seeks to impermissibly narrow that federal law for the convenience of housing operators, while increasing the likelihood for housing providers who abide by the language in this bill to violate federal fair housing and disability anti-discrimination laws. Accordingly, we respectfully request that you reject this short-sighted, discriminatory bill.

The Rehabilitation Act of 1973, The Fair Housing Amendments Act of 1988 (FHA) and The Americans with Disabilities Act of 1990 (ADA) are sacred federal laws that prevent discrimination against those with disabilities in their homes. AB 2760 is an attempt by the housing industry to subvert those broad protections and allow more landlords to deny housing to people with assistance animals. This is not surprising given the multi-family housing industry’s track record on pet policies, which is extremely restrictive on allowing pets, commonly restricting by arbitrary factors such as weight or breed. Federal anti-discrimination laws are a saving grace for people forced by these harsh and baseless policies into an unthinkable choice – their home or their pet.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Realtors (sponsor)  
Apartment Association, California Southern Cities  
Apartment Association of Orange County  
California Apartment Association  
East Bay Rental Housing Association  
North Valley Property Owners Association  
San Diego County Apartment Association  
Western Manufactured Housing Communities (if amended)

### **Opposition**

ASPCA  
Best Friends Animal Society  
Humane Society of the United States  
Law Foundation of Silicon Valley  
Marin Humane Society  
National Housing Law Project  
San Diego Humane Society  
San Francisco SPCA  
Social Compassion in Legislation  
State Humane Association of California  
Tenants Together  
Western Center on Law and Poverty

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