Disability Rights Nebraska
Protection and Advocacy for People with Disabilities

Testimony on LB 553

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Good afternoon Senator Lathrop and members of the Judiciary Committee. For the record my name is Brad B-R-A-D Meurrens M-E-U-R-R-E-N-S and I am the Public Policy Director at Disability Rights Nebraska, the designated Protection and Advocacy organization for persons with disabilities in Nebraska. I am here today opposed to LB 553 as currently written.

Our opposition to LB 553 is not to say that we approve or endorse people trying to "game" the system of providing accommodations for service animals or emotional support animals. Rather, our opposition to LB 553 is threefold: 1. It has problems with the definition of "assistance animal", "disability", and "health service provider" which in turn create further problems with implementation, 2. Its implementation is problematic, and 3. The goals can largely be achieved through education and enforcement of existing federal law on a case-by-case basis rather than by blanket dismissal of a certain type of documents.

LB 533 conflates the definitions of "service animal" and "emotional support animal" (or "support animal"—there are fluid monikers for these animals). Service animals are defined in and regulated by the Americans with Disabilities Act (ADA); they are only a trained dog or miniature horse. A cat is by definition not a service animal. The definition in the ADA also specifically excludes emotional support animals from the definition of a service animal. The Fair Housing Act is the federal law that regulates emotional support animals, and not service animals. Under the ADA, a service animal is authorized to go anywhere the person using the service animal can go (e.g., public/common areas of an apartment complex). However, an emotional support animal is not given the same authority—it must remain in the domicile and not taken to common areas.

However, LB 553 mashes together both service animals and emotional support animals in the definition of "Assistance animal" in section 1. Given the distinct definitions in federal law and the stark differences in the treatment of service and emotional support animals, these two definitions/categories cannot be combined and must be unraveled in this bill. Furthermore, the definition used in LB 553 is the same language in the Department of Housing and Urban Development (HUD) handout I have given you. It is used as an umbrella term used to generically describe both service and support animals; it was not intended to be a legal definition.

The definition of "disability" in LB 553 is not consistent with the federal definition of disability in the ADA (and in other Nebraska statutes); LB 553 should rely on the definition of disability in the ADA, not create a new definition for this particular issue.

The definition of "health care provider" is insufficient. Psychiatrists and social workers can also prescribe or provide the documented basis for a service or emotional support animal.

These definitional problems, while independent reasons to not advance this bill, create some practical problems when implementing LB 553. First, the ADA does not require a "doctor's note" for a person with a disability to have a service animal. Since that is expressly what is called for in subsection 2 for an accommodation of an "assistance animal", we are concerned that this may run afoul of the ADA's protocol for service animals. Subsection 2 is also suspect given the limits on questioning a person with a not-readily apparent disability about her/his service animal:

> **To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform?** A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make **even when an individual's disability and the work or tasks performed by the service animal are not readily apparent** *(e.g.,* individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

Furthermore service animals are not considered or handled as a reasonable accommodation; but emotional support animals are, which activates different standards or questions—those listed in Subsection 2 (a)-(c). But there are limitations to service animals, too:

> "If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures."[1]

LB 553 relies on the psychic powers and research ability of the landlord to determine the validity of the medical documentation: how will they know it's from the internet? And that site

[1]Housing and Urban Development 2013 Fact sheet, p. 6

is, in their view, "illegitimate". Will there be a registry of acceptable medical professionals?. For those in areas where appropriate medical professionals may be scarce, this may be the only way to get the appropriate documentation for a support animal. How will landlords rebut any of the questions they may ask in Subsection 2 (b)—there is or isn't a disability-related need for an emotional support animal accommodation? As the HUD handout clearly states:

> "A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal"[2]

And the documentation identifying the person's disability and the benefits of an emotional support animal are sufficient:

> "For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support."[3]

Additionally, in (c), what does "managing" a disability mean? Furthermore, how does the landlord know that supplying documentation for a support animal is the sole service provided—will they call the health service provider and will that provider disclose any medical information? What if the person moves to Nebraska from another state—this bill would not recognize their health care professional's authorization of a support animal. They would have to get a new doctor in Nebraska immediately and go through the process all over again.

There are rights and responsibilities in the existing federal law for both renters and landlords, and we believe that with increased education for all parties, that much of the concerns raised here today can be alleviated. Landlords can deny a reasonable accommodation, but on a case-by-case basis and on the actual behavior of the animal not stereotypes:

> "The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation….A 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

[2] Ibid, p. 3
[3] Ibid, pp. 3-4

— 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."[4]

Finally, we would suggest that the assessment of the validity or appropriateness of a support animal be decided on a case-by-case basis, based on the animal's behavior rather than erecting an attitudinal barrier regarding documentation for valid requests for reasonable accommodation for an emotional support animal.

HUD states succinctly why this committee should not advance LB 553: **"It is the housing provider's responsibility to know the applicable laws and comply with each of them."**

[4] Ibid, p. 3