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To: Senate Assessment and Taxation Committee
From: Mark Tomb, VP of Governmental Affairs
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Re: Written Testimony in Support of HB 2523

Chairman Patton and members of the House Judiciary Committee, thank you for the opportunity to provide written testimony today on behalf of the Kansas Association of REALTORS® in support of HB 2523. We encourage the committee to pass legislation that will provide necessary guidance for those seeking reasonable accommodation for their animals, while deterring fraudulent behavior.

The Kansas Association of REALTORS® represents over 10,000 members involved in residential, agricultural and commercial real estate and has advocated on behalf of the state's property owners for nearly 100 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

KAR has been working with the Kansas Manufactured Housing Association and The Associated Landlords of Kansas on legislation regarding emotional support animals. Our goal has been to give clear guidance to individuals making a request for accommodation and to a housing provider as to what substantiating documentation could be provided, while also providing a deterrent to fraudulent behavior. It was with these goals that KAR met with interested stakeholders as part of an ad hoc advisory committee on disability access organized by the Kansas Judicial Council. A report from this group was released in December 2019 that serves as the foundation of HB 2523.

Current law and Guidance

Both Federal and State law speak to the allowance of service animals in housing. Kansas has what is cited to in statute as the "Kansas white cane law." K.S.A. 39-1101 et. seq. It was originally passed in 1969 and had amendments to it in 1982 and 2003. The law is limited to "assistance dog[s]" which is defined as any guide dog, hearing assistance dog, or service dog. There is also defined a "professional therapy dog." The main requirement for each of these is that the dog is specially selected and trained.

Those needing such dogs, have a right to be accompanied by the dog on all common carriers, places of public accommodation, and anywhere where the general public is invited. Further, those with a disability, have the right to have the dog accompany them in the purchase and use of residential housing without being required to pay an extra charge. However, the individual would be liable for any damage done to the premises or facilities by such dog.

Federal Law, through the Fair Housing Act (FHA), is more expansive and extends to "emotional support animals," and is not limited to just dogs. A housing provider can ask for documentation from a reliable source (physician, social worker, mental health provider) if the disability is not apparent or if the need for an animal is

not apparent to be disability-related. The substantiation is not required for readily apparent disabilities, or extend to demands of medical records as proof. A housing provider must make an exception to pet policies, unless the housing provider can show the animal presents a risk of harm to others or would create an undue financial burden. The burden is on the housing provider denying the accommodation. In other words, the presumption is always for accommodation.

It should also be pointed out that just last week the U.S. Department of Housing and Urban Development announced the publication of guidance clarifying how housing providers can comply with federal law when assessing a person's request to have an animal in housing to provide assistance because of a disability. This new Assistance Animal Notice will help housing providers by offering a step-by-step set of best practices for complying with federal law when assessing accommodation requests involving animals and information that a person may need to provide about his or her disability-related need for the requested accommodation, including supporting information from a health care professional.

The Issue

The issue is not with those who genuinely rely on service animals to assist them in daily living, but rather those that falsely claim their pet is an emotional support animal (or "assistance animal") so that a landlord is required to allow the pet in the dwelling and common areas of the rental premises. Falsifying the need for a service animal is often done in a way to get around landlord no-pet policies, size and breed restrictions, or pet deposits. This puts a housing provider in a difficult position as they have duties and obligations to other tenants. Most important, misrepresentation of pets as emotional support or assistance animals unnecessarily casts doubt on those that have legitimate need for an emotional support or assistance animal.

Conclusion

The Kansas Association of REALTORS® would urge members of the House Judiciary Committee to support HB 2523, in order to provide clarity and integrity to requests for accommodation in housing in regards to assistance animals.