

JAN 26 2011

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## A BILL FOR AN ACT

RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS.

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

1           SECTION 1. The purpose of this Act is to make the  
2 reasonable accommodations provisions in state fair housing law  
3 consistent with federal Fair Housing Act case law and  
4 interpretations by clarifying the definition of "service  
5 animal", clarifying that a request for a reasonable  
6 accommodation may include the use of a service animal or comfort  
7 animal, and by defining the term "comfort animal".

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

10           "**§515-3 Discriminatory practices.** It is a discriminatory  
11 practice for an owner or any other person engaging in a real  
12 estate transaction, or for a real estate broker or salesperson,  
13 because of race, sex, including gender identity or expression,  
14 sexual orientation, color, religion, marital status, familial  
15 status, ancestry, disability, age, or human immunodeficiency  
16 virus infection:

17           (1) To refuse to engage in a real estate transaction with  
18           a person;

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- 1           (2) To discriminate against a person in the terms,  
2                           conditions, or privileges of a real estate transaction  
3                           or in the furnishing of facilities or services in  
4                           connection therewith;
- 5           (3) To refuse to receive or to fail to transmit a bona  
6                           fide offer to engage in a real estate transaction from  
7                           a person;
- 8           (4) To refuse to negotiate for a real estate transaction  
9                           with a person;
- 10          (5) To represent to a person that real property is not  
11                           available for inspection, sale, rental, or lease when  
12                           in fact it is available, or to fail to bring a  
13                           property listing to the person's attention, or to  
14                           refuse to permit the person to inspect real property,  
15                           or to steer a person seeking to engage in a real  
16                           estate transaction;
- 17          (6) To print, circulate, post, or mail, or cause to be  
18                           published a statement, advertisement, or sign, or to  
19                           use a form of application for a real estate  
20                           transaction, or to make a record or inquiry in  
21                           connection with a prospective real estate transaction,  
22                           that indicates, directly or indirectly, an intent to

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1           make a limitation, specification, or discrimination  
2           with respect thereto;

3           (7) To offer, solicit, accept, use, or retain a listing of  
4           real property with the understanding that a person may  
5           be discriminated against in a real estate transaction  
6           or in the furnishing of facilities or services in  
7           connection therewith;

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

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

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

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

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

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

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

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

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

6           [~~(9)~~] (8) To solicit or require as a condition of engaging  
7           in a real estate transaction that the buyer, renter,  
8           or lessee be tested for human immunodeficiency virus  
9           infection, the causative agent of acquired  
10          immunodeficiency syndrome;

11          [~~(10)~~] (9) To refuse to permit, at the expense of a person  
12          with a disability, reasonable modifications to  
13          existing premises occupied or to be occupied by the  
14          person if modifications may be necessary to afford the  
15          person full enjoyment of the premises. A real estate  
16          broker or salesperson, where it is reasonable to do  
17          so, may condition permission for a modification on the  
18          person agreeing to restore the interior of the  
19          premises to the condition that existed before the  
20          modification, reasonable wear and tear excepted;

21          [~~(11)~~] (10) To refuse to make reasonable accommodations,  
22          including the use of a service animal or comfort

1 animal, in rules, policies, practices, or services,  
2 when the accommodations may be necessary to afford a  
3 person with a disability equal opportunity to use and  
4 enjoy a housing accommodation[+].

5 When making a reasonable accommodation for the  
6 use of a service animal or comfort animal, reasonable  
7 restrictions may be imposed regarding excessive noise  
8 or other problems caused by those animals.

9 For the purposes of this paragraph:

10 "Comfort animal" means any animal that provides  
11 support, well-being, companionship or therapy for a  
12 person with a disability;

13 "Reasonable restriction" shall not include any  
14 restriction that allows any owner or person to refuse  
15 to negotiate or engage in a real estate transaction or  
16 to deny equal opportunity to use and enjoy a housing  
17 accommodation due to a disability because the person  
18 uses a service animal or comfort animal; provided that  
19 as used in this paragraph, the "reasonableness" of a  
20 restriction shall be examined by giving due  
21 consideration to the needs of a reasonable prudent  
22 person in the same or similar circumstances.

1 Depending on the circumstances, a "reasonable  
2 restriction" may require the owner of the service  
3 animal or comfort animal to comply with one or more of  
4 the following:

5 (A) Observe applicable laws including leash  
6 laws and pick-up laws;

7 (B) Assume responsibility for damage caused  
8 by the service animal or comfort  
9 animal; or

10 (C) Have the housing unit cleaned upon  
11 vacating by fumigation, deodorizing,  
12 professional carpet cleaning, or other  
13 method appropriate under the  
14 circumstances.

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

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

20 ~~[(12)]~~ (11) In connection with the design and construction  
21 of covered multifamily housing accommodations for  
22 first occupancy after March 13, 1991, to fail to

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1 design and construct housing accommodations in such a  
2 manner that:

3 (A) The housing accommodations have at least  
4 one accessible entrance, unless it is  
5 impractical to do so because of the  
6 terrain or unusual characteristics of  
7 the site; and

8 (B) With respect to housing accommodations  
9 with an accessible building entrance:

10 (i) The public use and common use  
11 portions of the housing  
12 accommodations are accessible to  
13 and usable by [~~disabled~~] persons[+] with disabilities;

15 (ii) Doors allow passage by persons in  
16 wheelchairs; and

17 (iii) All premises within covered  
18 multifamily housing accommodations  
19 contain an accessible route into  
20 and through the housing  
21 accommodations; light switches,  
22 electrical outlets, thermostats,



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1 and other environmental controls  
 2 are in accessible locations;  
 3 reinforcements in the bathroom  
 4 walls allow installation of grab  
 5 bars; and kitchens and bathrooms  
 6 are accessible by wheelchair; or

7 ~~(13)~~ (12) To discriminate against or deny a person access  
 8 to, or membership or participation in any multiple  
 9 listing service, real estate broker's organization, or  
 10 other service, organization, or facility involved  
 11 either directly or indirectly in real estate  
 12 transactions, or to discriminate against any person in  
 13 the terms or conditions of such access, membership, or  
 14 participation."

15 SECTION 3. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

18  
 19  
 20  
 21

INTRODUCED BY: Q.S.T.Z.

BY REQUEST

SB. NO. 1302

**Report Title:**

Fair Housing; Reasonable Accommodations

**Description:**

Makes the reasonable accommodations provisions in state fair housing law consistent with federal Fair Housing Act case law and interpretations.

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO FAIR HOUSING REASONABLE ACCOMMODATIONS.

PURPOSE: Clarify the definition of "service animal," clarify that a request for a reasonable accommodation may include the use of a service animal or comfort animal, and define "comfort animal" so that state law is consistent with similar provisions found in the federal Fair Housing Act.

MEANS: Amend section 515-3, Hawaii Revised Statutes.

JUSTIFICATION: Currently section 515-3 prohibits an owner or any other person engaging in a real estate transaction from denying equal opportunity to use and enjoy a housing accommodation to a person with a disability who uses a guide dog, signal dog, or service animal. The terms "guide dog" and "signal dog" are unnecessary because they are included in the definition of the term "service animal." In addition, consistent with federal fair housing law and current state law interpretation, a reasonable accommodation can include the use of a service animal or comfort animal.

Impact on the Public: Would clarify the term "service animal" and clarify that a person with a disability can request the use of a service animal or comfort animal as a reasonable accommodation.

Impact on the Department and other agencies:  
Clarification of this accommodation would decrease the number of complaints filed.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LBR 153.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.