

JAN 21 2011

A BILL FOR AN ACT

RELATING TO SERVICE ANIMALS.

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

1 SECTION 1. The legislature finds that the administrative
2 rules for the Americans with Disabilities Act (P.L. 101-336),
3 Title II (codified at 42 U.S.C. 12131-12165) and Title III
4 (codified at 42 U.S.C. 12181-12189) were revised and published
5 on September 15, 2010, and become effective on March 15, 2011.
6 The administrative rules governing Title II (28 C.F.R. Part 35)
7 relate specifically to state and county government programs and
8 services. The administrative rules governing Title III (28
9 C.F.R. Part 36) relate specifically to public accommodations or
10 private businesses or public conveyances. Both the Americans
11 with Disabilities Act Titles II and III rules changed the
12 definition of "service animals" to specify dogs. Hawaii law
13 references service animals in several sections of the Hawaii
14 Revised Statutes.

15 The legislature also finds that the definition for service
16 animal varies between the Americans with Disabilities Act and
17 the federal Fair Housing Act (P.L. 100-430). The definition for
18 service animal is broader under the Fair Housing Act than under



1 the Americans with Disabilities Act, because it allows animals
2 other than dogs and expands coverage to "comfort animals". The
3 legislature believes that conforming state law to the Americans
4 with Disabilities Act and Fair Housing Act definitions will
5 assist a person with a disability who uses a service animal or
6 comfort animal, as well as government and private entities
7 serving the public.

8 The purpose of this Act is to:

- 9 (1) Clarify state law regarding dog licensing to
10 appropriately conform provisions applicable to service
11 dogs with the Americans with Disabilities Act;
- 12 (2) Conform state law relating to public conveyances to
13 the Americans with Disabilities Act; and
- 14 (3) Amend the definition of "service animal" and include
15 "comfort animal" in state law provisions relating to
16 Fair Housing Act requirements for non-discrimination
17 in the sale and rental of housing.

18 SECTION 2. Section 143-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§143-4 Issuance of license and tags.** Upon the receipt of
21 the license fee, the director of finance shall issue to the
22 person paying the fee a license stating the following:



- 1 (1) The name and address of the person to whom the license
- 2 is issued;
- 3 (2) The year for which the license is paid;
- 4 (3) The date of payment;
- 5 (4) A description of the dog for which the license is
- 6 issued; and
- 7 (5) The number of the metal tag issued for the dog [~~and~~
- 8 ~~(6) Any dog approved by the director of finance pursuant~~
- 9 ~~to rules established by the director to be a service~~
- 10 ~~dog shall be so designated on the license].~~

11 The director of finance shall at the same time issue and
12 deliver to the person a metal tag of such form and design as the
13 director of finance may designate with a serial number and the
14 year for which it is issued plainly inscribed thereon, which tag
15 shall be attached to a collar around the neck of the dog for
16 which the license has been issued. The fee for the tag shall be
17 set by each county council; provided that, until and unless
18 provided by ordinance, the fee shall be 10 cents.

19 The director of finance, pursuant to chapter 91, shall
20 adopt rules for the licensing of [~~guide, signal, and~~] service
21 dogs.

22 For purpose of this section:



1 "Service dog" means any dog that is individually trained to
2 do work or perform tasks for the benefit of an individual with a
3 disability, including a physical, sensory, psychiatric,
4 intellectual, or other mental disability."

5 SECTION 3. Section 347-13, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~§347-13 [Blind, partially blind, physically handicapped,]~~
8 Persons who are blind, visually impaired, disabled; public
9 places; public conveyances. (a) [~~The blind, visually~~
10 ~~handicapped,]~~ Persons who are blind, visually impaired, and
11 otherwise [~~physically~~] disabled are entitled to full and equal
12 accommodations, advantages, facilities, and privileges of all
13 common carriers, airplanes, motor vehicles, railroad trains,
14 motor buses, street cars, boats, or any other public conveyances
15 or modes of transportation, hotels, lodging places, places of
16 public accommodation, amusement, or resort, and other places to
17 which the general public is invited, subject only to the
18 conditions and limitations established by law and applicable
19 alike to all persons.

20 (b) Every person who is blind, deaf, [or] visually
21 impaired, or [physically handicapped person] disabled shall have
22 the right to be accompanied by a [~~guide, signal, or~~] service



1 dog, especially trained for the purpose~~[7]~~ of assisting the
2 person, in any of the places listed in subsection (a) without
3 being required to pay an extra charge for the [~~guide, signal,~~
4 ~~or~~] service dog; provided that the [~~blind, deaf, or visually or~~
5 ~~physically handicapped~~] person shall be liable for any damage
6 done to the premises or facilities by such dog. No such dog
7 shall be considered dangerous merely because it is unmuzzled.

8 (c) Every physically [~~handicapped~~] disabled person shall
9 have the right to use a life jacket or other flotation device in
10 a public swimming pool; provided that:

11 (1) The [~~handicapped~~] physically disabled person suffers
12 from a physical disability or condition which requires
13 the use of a life jacket or other flotation device;
14 and

15 (2) The [~~handicapped~~] physically disabled person obtains a
16 statement signed by a licensed physician or physician
17 assistant attesting to the [~~handicapped~~] physically
18 disabled person's need to use a life jacket or other
19 flotation device.

20 (d) The director of human services shall adopt rules
21 pursuant to chapter 91 necessary for the purposes of this
22 section.



1 For purposes of this section:

2 "Service dog" means any dog that is individually trained to
3 do work or perform tasks for the benefit of an individual with a
4 disability, including a physical, sensory, psychiatric,
5 intellectual, or other mental disability."

6 SECTION 4. Section 515-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§515-3 Discriminatory practices.** It is a discriminatory
9 practice for an owner or any other person engaging in a real
10 estate transaction, or for a real estate broker or salesperson,
11 because of race, sex, including gender identity or expression,
12 sexual orientation, color, religion, marital status, familial
13 status, ancestry, disability, age, or human immunodeficiency
14 virus infection:

- 15 (1) To refuse to engage in a real estate transaction with
16 a person;
- 17 (2) To discriminate against a person in the terms,
18 conditions, or privileges of a real estate transaction
19 or in the furnishing of facilities or services in
20 connection therewith;



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



1 be discriminated against in a real estate transaction
2 or in the furnishing of facilities or services in
3 connection therewith;

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

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

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

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

19 "Comfort animal" means an animal that provides
20 support, well-being, companionship, or therapy for an
21 individual with a disability.



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~~] or comfort
11 animal to comply with one or more of the following:

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

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



1 "Service animal" means any ~~[animal]~~ dog,
2 including guide dogs and hearing dogs, that is trained
3 to provide those life activities limited by the
4 disability of the person;

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

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

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



1 (11) To refuse to make reasonable accommodations in rules,
2 policies, practices, or services, when the
3 accommodations may be necessary to afford a person
4 with a disability equal opportunity to use and enjoy a
5 housing accommodation;

6 (12) In connection with the design and construction of
7 covered multifamily housing accommodations for first
8 occupancy after March 13, 1991, to fail to design and
9 construct housing accommodations in such a manner
10 that:

11 (A) The housing accommodations have at least one
12 accessible entrance, unless it is impractical to
13 do so because of the terrain or unusual
14 characteristics of the site; and

15 (B) With respect to housing accommodations with an
16 accessible building entrance:

17 (i) The public use and common use portions of
18 the housing accommodations are accessible to
19 and usable by [~~disabled~~] persons[+] with
20 disabilities;

21 (ii) Doors allow passage by persons in
22 wheelchairs; and



1 (iii) All premises within covered multifamily
2 housing accommodations contain an accessible
3 route into and through the housing
4 accommodations; light switches, electrical
5 outlets, thermostats, and other
6 environmental controls are in accessible
7 locations; reinforcements in the bathroom
8 walls allow installation of grab bars; and
9 kitchens and bathrooms are accessible by
10 wheelchair; or

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

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

4

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Report Title:

Service Animals; Definitions; ADA Rules; FHA

Description:

Adds a definition of "service dog" in provisions relating to dog licensing, to conform with new ADA rules; expands the definition of "service animal" to include "comfort animals", to conform with FHA rules regarding non-discrimination in the sale or rental of housing.

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