

## ACT 175

S.B. NO. 892

A Bill for an Act Relating to Service Animals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain references to service animals in state law are either obsolete or inconsistent with federal law. Accordingly, the purpose of this Act is to:

- (1) Conform section 142-5.5, Hawaii Revised Statutes, regarding quarantine, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes;
- (2) Clarify section 143-4, Hawaii Revised Statutes, regarding dog licensing, to appropriately conform provisions applicable to service dogs with the Americans with Disabilities Act, Public Law 101-336;
- (3) Conform section 347-13, Hawaii Revised Statutes, relating to public conveyances, to Titles II and III of the Americans with Disabilities Act, codified as Title 42 United States Code, Sections 12131 through 12165, and Sections 12181 through 12189, respectively;
- (4) Conform section 347-19, Hawaii Revised Statutes, regarding the rights and liability of blind or partially blind, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes;
- (5) Conform section 515-3, Hawaii Revised Statutes, regarding discriminatory practices in real estate transactions, to the federal Fair Housing Act, Public Law 100-430; and
- (6) Conform sections 711-1109.4 and 711-1009.5,<sup>1</sup> Hawaii Revised Statutes, regarding criminal offenses against service dogs, to the definition of “service dog” established in chapter 347, Hawaii Revised Statutes.

SECTION 2. Chapter 347, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§347- Service dog, defined.** As used in this chapter, “service dog” means 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, intellectual, or other mental disability. A companion or comfort animal is not a service dog unless it meets the requirements of this definition and it accompanies a person for the purpose of performing the work or tasks for which it has been trained.”

SECTION 3. Section 142-5.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§142-5.5] Guide, signal, or service]~~ **Service dogs.** Any person with a disability who uses the services of a ~~[guide, signal, or]~~ service dog, as defined in section ~~[515-3,]~~ 347-, shall be permitted to reside on site for the duration of quarantine, if housing is available.”

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

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

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

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

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

SECTION 5. Section<sup>1</sup> 347, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 347  
BLIND ~~[AND]~~, VISUALLY HANDICAPPED, AND OTHER DISABLED  
PERSONS”**

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

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

(b) Every person who is blind, deaf, [or] visually handicapped, or [physically handicapped person] otherwise disabled shall have the right to be accom-

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

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

- (1) The ~~[handicapped]~~ person suffers from a physical disability or condition ~~[which]~~ that requires the use of a life jacket or other flotation device; and
- (2) The ~~[handicapped]~~ person obtains a statement signed by a licensed physician or physician assistant attesting to the ~~[handicapped]~~ person's need to use a life jacket or other flotation device.
- (d) The director of human services shall adopt rules pursuant to chapter 91 necessary for the purposes of this section."

SECTION 7. Section 347-19, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§347-19]]~~ Rights of blind; partially blind.** A blind or visually handicapped person not carrying a cane or using a ~~[guide]~~ service dog in any of the places, accommodations or conveyances listed in section 347-13, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or visually handicapped person to carry a cane or to use a ~~[guide]~~ service dog in any such places, accommodations, or conveyances shall not constitute nor be evidence of negligence.”

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

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

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection ~~[therewith;]~~ with a real estate transaction;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- (6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, ~~[or]~~ to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, that indicates, directly or

indirectly, an intent to make a limitation, specification, or discrimination with respect ~~[thereto;]~~ to a real estate transaction;

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

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

~~“Blind” shall be as defined in section 235-1;~~

~~“Deaf” shall be as defined in section 235-1;~~

~~“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;~~

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

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

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

~~“Service animal” means any animal that is trained to provide those life activities limited by the disability of the person;~~

~~“Signal dog” means any dog that is trained to alert a deaf person to intruders or sounds;]~~

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

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

- ~~(11)~~ (10) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use

and enjoy a housing accommodation; provided that if reasonable accommodations include the use of an animal, reasonable restrictions may be imposed:

- [(12)] (11) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
- (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
  - (B) With respect to housing accommodations with an accessible building entrance:
    - (i) The public use and common use portions of the housing accommodations are accessible to and usable by ~~disabled~~ persons ~~with disabilities~~;
    - (ii) Doors allow passage by persons in wheelchairs; and
    - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- [(13)] (12) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

SECTION 9. Section 711-1109.4, Hawaii Revised Statutes, is amended to read as follows:

~~"[§711-1109.4] Causing injury or death to a [guide dog, signal dog, or service animal.] service dog.~~ (1) A person commits the offense of causing injury or death to a ~~[guide dog, signal dog, or service animal.] service dog~~ if:

- (a) The person recklessly causes injury to or the death of any ~~[guide dog, signal dog, or service animal.] service dog~~ while the ~~service dog~~ is in the discharge of its duties; or
  - (b) The person is the owner of a dog and recklessly permits that dog to attack a ~~[guide dog, signal dog, or service animal.] service dog~~ while ~~[that] the service dog~~ is in the discharge of its duties, resulting in the injury or death of the ~~[guide dog, signal dog, or service animal.] service dog~~.
- (2) Any person who commits the offense of causing injury or death to a ~~[guide dog, signal dog, or service animal.] service dog~~ shall be punished as follows:
- (a) For a first offense by a fine of not more than \$2,000, imprisonment of not more than thirty days, or both; and
  - (b) For a second or subsequent offense by a fine of not more than \$5,000, imprisonment of not more than thirty days, or both.
  - (3) Any person who is convicted of a violation of this section shall be ordered to make restitution to:

- (a) The person with a disability who has custody or ownership of the ~~[guide dog, signal dog, or service animal,]~~ service dog, for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service dog; and
- (b) The person or organization that incurs the cost of retraining or replacing the ~~[animal,]~~ service dog, for the cost of retraining or replacing the ~~[animal]~~ service dog if it is disabled or killed.
- (4) As used in this section, ~~["guide dog", "signal dog", and "service animal"]~~ "service dog" shall have the same meaning as in section ~~[515-3(8)-]~~ 347-."

SECTION 10. Section 711-1109.5, Hawaii Revised Statutes, is amended to read as follows:

~~["§711-1109.5"]~~ **Intentional interference with the use of a ~~[guide dog, signal dog, or service animal,]~~ service dog.** (1) A person commits the offense of intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog if the person, with no legal justification, intentionally or knowingly:

- (a) Harms a ~~[guide dog, signal dog, or service animal,]~~ service dog; or
- (b) Strikes or kicks a ~~[guide dog, signal dog, or service animal,]~~ service dog;

while the ~~[guide dog, signal dog, or service animal]~~ service dog is in the discharge of its duties.

(2) Intentional interference with the use of a ~~[guide dog, signal dog, or service animal]~~ service dog is a misdemeanor.

(3) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(4) As used in this section, ~~["guide dog", "signal dog", and "service animal"]~~ "service dog" shall have the same meaning as in section ~~[515-3(8)-]~~ 347-."

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved July 1, 2011.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.