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S.B. NO. 2461

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 there is a growing problem with people fraudulently representing untrained animals as service dogs. This has re-

sulted in legitimate service dogs being needlessly distracted or even attacked by untrained dogs or other animals, as well as in violations of the food and sanitation code. Currently, there is no legal consequence for misrepresenting a pet dog or other animal as a service animal.

The legislature further finds that, generally, a service animal is a dog that is individually trained to work or perform tasks for people with disabilities. The work or task that a service animal has been trained to provide must be directly related to a person's disability. The legislature affirms that a dog or other animal whose sole function is to provide companionship, comfort, or emotional support does not qualify as a service dog under chapter 347, Hawaii Revised Statutes, or the Americans with Disabilities Act of 1990 (ADA).

The legislature additionally finds that a penalty for misrepresentation of a dog or other animal as a service animal will discourage people from fraudulently representing their pets as service animals in order to bring the animals into restaurants, supermarkets, and other inappropriate locations. The legislature also finds that statutory penalties will also discourage persons from fraudulently misrepresenting a pet animal as a service animal in order to gain housing amenities which, but for otherwise lawful restrictions on pet ownership, would not be available to residents of a dwelling or building. The legislature finds that such penalties are not inconsistent with the spirit of the ADA. The legislature also finds that an appropriate definition of "service animal" will help businesses and other organizations to comply with the law.

It is not the legislature's intent to undermine the valuable purpose and goals of the ADA or other applicable state or federal laws. The United States Department of Justice has issued guidance on the questions that can be asked of a person to determine if a dog is a bona fide service dog, suggesting that it does not violate the ADA to ask questions concerning the specific and appropriate training of a particular dog being presented as a service animal. The legislature further recognizes that more than fifteen states currently prohibit misrepresentation of a service animal by means of civil or criminal penalties, or both.

The purpose of this Act is to:

- (1) Establish a civil penalty for fraudulently representing an animal as a service animal; and
- (2) Establish a definition of "service animal" that more closely conforms with the Americans with Disabilities Act of 1990, as amended.

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

§347- Misrepresentation of a service animal; civil penalty. (a) It shall be unlawful for a person to knowingly misrepresent as a service animal any animal that does not meet the requirements of a service animal as defined in section 347-2.5.

(b) Upon a finding of clear and convincing evidence, a person who violates subsection (a) shall be fined not less than \$100 and not more than \$250 for the first violation, and not less than \$500 for a second violation and each violation thereafter.

(c) Nothing in this section shall preclude any other civil remedies available to a person, entity, or other organization arising from misrepresentation by another person of a service animal."

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

“§142-5.5 **Service [dogs:] animals.** Any person with a disability who uses the services of a service [dog:] animal, as defined in section 347-2.5, shall be permitted to reside on site for the duration of quarantine, if housing is available.”

SECTION 4. Section 347-2.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§347-2.5]]~~ **Service [dog:] animal, defined.** As used in this chapter, “service [dog:] animal” 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, psychiatric, 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.]~~ Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must relate directly to the individual’s disability. Neither the potential crime deterrent effects of an animal’s presence nor the provision of emotional support, comfort, or companionship by an animal constitutes work or tasks for the purposes of this definition.”

SECTION 5. Section 347-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every person who is blind, deaf, visually handicapped, or otherwise disabled shall have the right to be accompanied by a service [dog:] animal, 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 service [dog:] animal; provided that the person shall be liable for any damage done to the premises or facilities by the service [dog:] animal. No service [dog:] animal shall be considered dangerous merely because it is unmuzzled.”

SECTION 6. 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 service [dog] animal 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 service [dog] animal in any such places, accommodations, or conveyances shall not constitute nor be evidence of negligence.”

SECTION 7. Section 489-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Service animal” means the same as defined in section 347-2.5.”

SECTION 8. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

“§489-3 **Discriminatory practices prohibition.** Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race[;]; sex, including gender

identity or expression[5]; sexual orientation[5]; color[5]; religion[5]; ancestry[5]; or disability, including the use of a service animal, are prohibited.”

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

1. By amending its title and subsection (1) to read:

“§711-1109.4 Causing injury or death to a service [dog] animal or law enforcement animal. (1) A person commits the offense of causing injury or death to a service [dog] animal or law enforcement animal if:

- (a) The person recklessly causes substantial bodily injury to or the death of any service [dog] animal or law enforcement animal while the service [dog] animal or law enforcement animal 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 service [dog] animal or law enforcement animal while the service [dog] animal or law enforcement animal is in the discharge of its duties, resulting in the substantial bodily injury or death of the service [dog] animal or law enforcement animal.”

2. By amending subsections (3) to (5) to read:

“(3) Any person who commits the offense of causing injury or death to a service [dog] animal or law enforcement animal shall be guilty of a class C felony.

(4) In addition to any other penalties, any person who is convicted of a violation of this section shall be ordered to make restitution to:

- (a) The owner of the service [dog] animal or law enforcement animal for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service [dog] animal or law enforcement animal; and
- (b) The person, entity, or organization that incurs the cost of retraining or replacing the service [dog] animal or law enforcement animal for the cost of retraining or replacing the service [dog] animal or law enforcement animal if it is disabled or killed.

(5) As used in this section “service [dog] animal” shall have the same meaning as in section 347-2.5.”

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

1. By amending its title and subsection (1) to read:

“§711-1109.5 Intentional interference with the use of a service [dog] animal or law enforcement animal. (1) A person commits the offense of intentional interference with the use of a service [dog] animal or law enforcement animal if the person, with no legal justification, intentionally or knowingly strikes, beats, kicks, cuts, stabs, shoots, or administers any type of harmful substance or poison to a service [dog] animal or law enforcement animal while the service [dog] animal or law enforcement animal is in the discharge of its duties.”

2. By amending subsections (3) and (4) to read:

“(3) Intentional interference with the use of a service [dog] animal or law enforcement animal is a misdemeanor.

(4) In addition to any other penalties, any person who is convicted of a violation of this section shall be ordered to make restitution to:

- (a) The owner of the service [dog] animal or law enforcement animal for any veterinary bills and out-of-pocket costs incurred as a result

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of the injury to the service [~~dog~~] animal or law enforcement animal;
and

- (b) The person, entity, or organization that incurs the cost of retraining or replacing the service [~~dog~~] animal or law enforcement animal for the cost of retraining or replacing the service [~~dog~~] animal or law enforcement animal, if it is disabled or killed.”

3. By amending subsection (6) to read:

“(6) As used in this section, “service [~~dog~~] animal” shall have the same meaning as in section 347-2.5.”

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

SECTION 13. This Act shall take effect on January 1, 2019.

(Became law on July 10, 2018, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.