



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

GOV. MSG. NO. 1326

July 12, 2018

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: SB2461 SD1 HD1 CD1

SB2461 SD1 HD1 CD1, entitled "A BILL FOR AN ACT RELATING TO SERVICE ANIMALS" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to 1) establish a civil penalty for knowingly misrepresenting an animal as a service animal; and 2) conform existing Hawai'i law with the definition of "service animal" under the Americans with Disabilities Act of 1990.

Enforcement of this civil offense may be problematic because there is no official registry or form of recognized identification for a service animal. The ADA prohibits asking any questions beyond "is the dog a service animal, required because of a disability?" and "what task(s) has the dog been trained to perform?" In other words, the ADA makes it illegal to ask about the nature of the person's disability, require proof of the disability, and/or require the animal to perform the stated task. Additionally, owners are allowed to train their own animals, as opposed to being professionally trained.

None of the county police departments submitted testimony. However, it appears they would be the primary agencies responsible for enforcement. It may be difficult to prove in court by a clear and convincing standard that a person knowingly



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misrepresented an animal as a service animal. However, it is worth noting that similar legislation is present in at least fifteen other states.

For the foregoing reasons, SB2461 SD1 HD1 CD1 will become law as ACT 217, Session Laws of Hawai'i 2018, effective July 10, 2018, without my signature.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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 there is a growing
2 problem with people fraudulently representing untrained animals
3 as service dogs. This has resulted in legitimate service dogs
4 being needlessly distracted or even attacked by untrained dogs
5 or other animals, as well as in violations of the food and
6 sanitation code. Currently, there is no legal consequence for
7 misrepresenting a pet dog or other animal as a service animal.

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

17 The legislature additionally finds that a penalty for
18 misrepresentation of a dog or other animal as a service animal



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

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



1 misrepresentation of a service animal by means of civil or
2 criminal penalties, or both.

3 The purpose of this Act is to:

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

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

12 "§347- Misrepresentation of a service animal; civil
13 penalty. (a) It shall be unlawful for a person to knowingly
14 misrepresent as a service animal any animal that does not meet
15 the requirements of a service animal as defined in section
16 347-2.5.

17 (b) Upon a finding of clear and convincing evidence, a
18 person who violates subsection (a) shall be fined not less than
19 \$100 and not more than \$250 for the first violation, and not
20 less than \$500 for a second violation and each violation
21 thereafter.



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

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

7 "~~§142-5.5~~ **Service [~~dogs-~~ animals.** Any person with a
8 disability who uses the services of a service [~~dog,~~ animal, as
9 defined in section 347-2.5, shall be permitted to reside on site
10 for the duration of quarantine, if housing is available."

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

13 "~~[+]§347-2.5[+]~~ **Service [~~dog,~~ animal, defined.** As used
14 in this chapter, "service [~~dog,~~ animal" means any dog that is
15 individually trained to do work or perform tasks for the benefit
16 of an individual with a disability, including a physical,
17 sensory, psychiatric, intellectual, or other mental disability.
18 [~~A companion or comfort animal is not a service dog unless it~~
19 ~~meets the requirements of this definition and it accompanies a~~
20 ~~person for the purpose of performing the work or tasks for which~~
21 ~~it has been trained.] Other species of animals, whether wild or~~

1 domestic, trained or untrained, are not service animals for the
2 purposes of this definition. The work or tasks performed by a
3 service animal must relate directly to the individual's
4 disability. Neither the potential crime deterrent effects of an
5 animal's presence nor the provision of emotional support,
6 comfort, or companionship by an animal constitutes work or tasks
7 for the purposes of this definition."

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

10 "(b) Every person who is blind, deaf, visually
11 handicapped, or otherwise disabled shall have the right to be
12 accompanied by a service [~~dog~~] animal, especially trained for
13 the purpose of assisting the person in any of the places listed
14 in subsection (a) without being required to pay an extra charge
15 for the service [~~dog~~] animal; provided that the person shall be
16 liable for any damage done to the premises or facilities by the
17 service [~~dog~~] animal. No service [~~dog~~] animal shall be
18 considered dangerous merely because it is unmuzzled."

19 SECTION 6. Section 347-19, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§347-19 Rights of blind, partially blind.** A blind or
 2 visually handicapped person not carrying a cane or using a
 3 service [dog] animal in any of the places, accommodations or
 4 conveyances listed in section 347-13, shall have all of the
 5 rights and privileges conferred by law upon other persons, and
 6 the failure of a blind or visually handicapped person to carry a
 7 cane or to use a service [dog] animal in any such places,
 8 accommodations, or conveyances shall not constitute nor be
 9 evidence of negligence."

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

13 "Service animal" means the same as defined in section
 14 347-2.5."

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

17 "**§489-3 Discriminatory practices prohibition.** Unfair
 18 discriminatory practices that deny, or attempt to deny, a person
 19 the full and equal enjoyment of the goods, services, facilities,
 20 privileges, advantages, and accommodations of a place of public
 21 accommodation on the basis of race[7]; sex, including gender



1 identity or expression[7]; sexual orientation[7]; color[7];
2 religion[7]; ancestry[7]; or disability, including the use of a
3 service animal, are prohibited."

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

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

7 "§711-1109.4 **Causing injury or death to a service [deg]**
8 **animal or law enforcement animal.** (1) A person commits the
9 offense of causing injury or death to a service [deg] animal or
10 law enforcement animal if:

11 (a) The person recklessly causes substantial bodily injury
12 to or the death of any service [deg] animal or law
13 enforcement animal while the service [deg] animal or
14 law enforcement animal is in the discharge of its
15 duties; or

16 (b) The person is the owner of a dog and recklessly
17 permits that dog to attack a service [deg] animal or
18 law enforcement animal while the service [deg] animal
19 or law enforcement animal is in the discharge of its
20 duties, resulting in the substantial bodily injury or



1 death of the service [deg] animal or law enforcement
2 animal."

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

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

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

10 (a) The owner of the service [deg] animal or law
11 enforcement animal for any veterinary bills and out-
12 of-pocket costs incurred as a result of the injury to
13 the service [deg] animal or law enforcement animal;
14 and

15 (b) The person, entity, or organization that incurs the
16 cost of retraining or replacing the service [deg]
17 animal or law enforcement animal for the cost of
18 retraining or replacing the service [deg] animal or
19 law enforcement animal if it is disabled or killed.

20 (5) As used in this section "service [deg] animal" shall
21 have the same meaning as in section 347-2.5."



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

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

4 "§711-1109.5 Intentional interference with the use of a
5 service [deg] animal or law enforcement animal. (1) A person
6 commits the offense of intentional interference with the use of
7 a service [deg] animal or law enforcement animal if the person,
8 with no legal justification, intentionally or knowingly strikes,
9 beats, kicks, cuts, stabs, shoots, or administers any type of
10 harmful substance or poison to a service [deg] animal or law
11 enforcement animal while the service [deg] animal or law
12 enforcement animal is in the discharge of its duties."

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

14 "(3) Intentional interference with the use of a service
15 [deg] animal or law enforcement animal is a misdemeanor.

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

19 (a) The owner of the service [deg] animal or law
20 enforcement animal for any veterinary bills and out-
21 of-pocket costs incurred as a result of the injury to



1 the service [del] animal or law enforcement animal;
2 and

3 (b) The person, entity, or organization that incurs the
4 cost of retraining or replacing the service [del]
5 animal or law enforcement animal for the cost of
6 retraining or replacing the service [del] animal or
7 law enforcement animal, if it is disabled or killed."

8 3. By amending subsection (6) to read:

9 "(6) As used in this section, "service [del]" animal"
10 shall have the same meaning as in section 347-2.5."

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

14 SECTION 12. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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

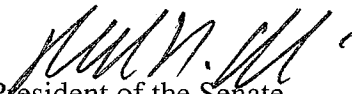
APPROVED this day of , 2018

GOVERNOR OF THE STATE OF HAWAII


THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.



President of the Senate



Clerk of the Senate

SB No. 2461, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives