

JAN 19 2018

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# 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 dogs as  
3 service dogs. This has resulted in legitimate service dogs  
4 being attacked by untrained dogs and violations of the food and  
5 sanitation code. Currently, there is no consequence for  
6 misrepresenting a pet or other dog as a service dog.

7           The legislature further finds that, generally, a service  
8 animal is a dog that is individually trained to work or perform  
9 tasks for people with disabilities. The work or task that a  
10 service animal has been trained to provide must be directly  
11 related to the person's disability. As such, service dogs are  
12 working dogs instead of pets, and a dog whose sole function is  
13 to provide comfort or emotional support does not qualify as a  
14 service dog under the Americans with Disabilities Act of 1990  
15 (ADA).

16           The legislature additionally finds that a penalty for  
17 misrepresentation of a dog as a service animal would discourage



1 people from fraudulently representing their pets in order to  
2 bring the animals into restaurants and other inappropriate  
3 locations, and that such penalties are not inconsistent with the  
4 spirit of the ADA. The United States Department of Justice has  
5 issued guidance on the questions that can be asked of a person  
6 to determine if a dog is a service dog, suggesting that it does  
7 not violate the ADA to ask such questions.

8 The legislature also finds that an appropriate definition  
9 of "service animal" will help businesses comply with the law

10 The purpose of this Act is to:

- 11 (1) Establish a penalty for fraudulently representing a  
12 dog as a service animal; and
- 13 (2) Establish a definition of "service animal" that  
14 conforms with the Americans with Disabilities Act of  
15 1990.

16 SECTION 2. Chapter 711, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "§711- Misrepresentation of a service animal; penalty.

- 20 (1) A person commits the offense of misrepresentation of a  
21 service animal if that person knowingly misrepresents as a



1 service animal any animal that does not meet the requirements of  
2 a service animal.

3 (2) Misrepresentation of a service animal is a misdemeanor  
4 punishable by imprisonment for not more than six months and a  
5 fine of not less than \$250 and not more than \$1,000 for the  
6 first offense, and not less than \$1,000 and not more than \$2,000  
7 for the second offense and each offense thereafter.

8 (3) As used in this section, "service animal" shall have  
9 the same meaning as in section 347-2.5.

10 (4) Nothing in this section is intended to affect any  
11 civil remedies available for a violation of this section."

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

14 "~~§142-5.5~~ **Service [~~dogs~~] animals.** Any person with a  
15 disability who uses the services of a service [~~dog~~] animal, as  
16 defined in section 347-2.5, shall be permitted to reside on site  
17 for the duration of quarantine, if housing is available."

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

20 "[~~§~~]~~347-2.5~~[~~§~~] **Service [~~dog~~] animal, defined.** As used  
21 in this chapter, "service [~~dog~~] animal" means any dog that is



1 individually trained to do work or perform tasks for the benefit  
2 of an individual with a disability, including a physical,  
3 sensory, psychiatric, intellectual, or other mental disability.  
4 ~~[A companion or comfort animal is not a service dog unless it~~  
5 ~~meets the requirements of this definition and it accompanies a~~  
6 ~~person for the purpose of performing the work or tasks for which~~  
7 ~~it has been trained.] Other species of animals, whether wild or  
8 domestic, trained or untrained, are not service animals for the  
9 purposes of this definition. The work or tasks performed by a  
10 service animal must be directly related to the individual's  
11 disability. Examples of work or tasks include, but are not  
12 limited to assisting individuals who are blind or have low  
13 vision with navigation and other tasks, alerting individuals who  
14 are deaf or hard of hearing to the presence of people or sounds,  
15 providing non-violent protection or rescue work, pulling a  
16 wheelchair, assisting an individual during a seizure, alerting  
17 individuals to the presence of allergens, retrieving items such  
18 as medicine or the telephone, providing physical support and  
19 assistance with balance and stability to individuals with  
20 mobility disabilities, and helping persons with psychiatric and  
21 neurological disabilities by preventing or interrupting~~



1 impulsive or destructive behaviors. The crime deterrent effects  
2 of an animal's presence and the provision of emotional support,  
3 well-being, comfort, or companionship do not constitute work or  
4 tasks for the purposes of this definition."

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

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

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

18 "**§347-19 Rights of blind; partially blind.** A blind or  
19 visually handicapped person not carrying a cane or using a  
20 service [~~dog~~] animal in any of the places, accommodations or  
21 conveyances listed in section 347-13, shall have all of the



1 rights and privileges conferred by law upon other persons, and  
2 the failure of a blind or visually handicapped person to carry a  
3 cane or to use a service ~~dog~~ animal in any such places,  
4 accommodations, or conveyances shall not constitute nor be  
5 evidence of negligence."

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

9 "Service animal" means the same as defined in section 347-  
10 2.5."

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

13 **"§489-3 Discriminatory practices prohibition.** Unfair  
14 discriminatory practices that deny, or attempt to deny, a person  
15 the full and equal enjoyment of the goods, services, facilities,  
16 privileges, advantages, and accommodations of a place of public  
17 accommodation on the basis of race<sub>[7]</sub><sub>i</sub>; sex, including gender  
18 identity or expression<sub>[7]</sub><sub>i</sub>; sexual orientation<sub>[7]</sub><sub>i</sub>; color<sub>[7]</sub><sub>i</sub>;  
19 religion<sub>[7]</sub><sub>i</sub>; ancestry<sub>[7]</sub><sub>i</sub>; or disability, including the use of a  
20 service animal, are prohibited."



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

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

4 "§711-1109.4 Causing injury or death to a service [dog]  
5 animal or law enforcement animal. (1) A person commits the  
6 offense of causing injury or death to a service [dog] animal or  
7 law enforcement animal if:

8 (a) The person recklessly causes substantial bodily injury  
9 to or the death of any service [dog] animal or law  
10 enforcement animal while the service [dog] animal or  
11 law enforcement animal is in the discharge of its  
12 duties; or

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

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



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

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

7           (a) The owner of the service [~~dog~~] animal or law  
8 enforcement animal for any veterinary bills and out-  
9 of-pocket costs incurred as a result of the injury to  
10 the service [~~dog~~] animal or law enforcement animal;  
11 and

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

17           (5) As used in this section "service [~~dog~~] animal" shall  
18 have the same meaning as in section 347-2.5."

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

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



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

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

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

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

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



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

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

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

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

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

14 SECTION 13. This Act shall take effect upon its approval.

15



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# S.B. NO. 2461

**Report Title:**

Service Animals; Misrepresentation; Americans with Disabilities Act

**Description:**

Establishes the offense of "misrepresentation of a service animal". Changes the term "service dog" to "service animal" and amends the definition of that term to conform with the Americans with Disabilities Act of 1990.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

