

ACT 154

S.B. NO. 2002

A Bill for an Act Relating to Fair Housing Reasonable Accommodations.

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

SECTION 1. The legislature finds that recent legislation prohibits the misrepresentation of animals as service animals. Act 217, Session Laws of Hawaii 2018 (Act 217), amends the definition of “service animal” to mean “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” and requires that the work or tasks performed by the service animal relate directly to the individual’s disability. Act 217 also excludes other species of animals and the provision of emotional support, comfort, or companionship.

The legislature further finds that the term “service animal” applies in the general context of the Americans with Disabilities Act, while the broader term “assistance animal”, which is used under the federal and state fair housing laws and rules, includes a wider category of animals that provide support, including emotional support animals and service animals. When a person with a disability requests the use of an assistance animal as a reasonable housing accommodation, the housing provider may ask for information, including verification from a treating health care professional, that the person has a disability, and the requested assistance animal is needed to alleviate one or more symptoms of the person’s disability. “Assistance animal” is defined in the State’s administrative rules, but not in statute.

To assist individuals requiring assistance animals and housing providers who are requested to make reasonable accommodations for assistance animals, the purpose of this Act is to:

- (1) Define “assistance animal” in the context of existing state law prohibiting discrimination in real property transactions;
- (2) Codify the administrative process to verify that a person requesting a reasonable accommodation that includes the use of an assistance animal has a disability and the assistance animal is needed to alleviate one or more symptoms of the person’s disability; and
- (3) Specify that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 Discriminatory practices. (a) 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 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 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 with a real estate transaction;
- ☐(7)☐ 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;
- ☐(8)☐ 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; 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;
- ☐(9)☐ 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 assistance animal, reasonable restrictions may be imposed; provided further that if the disability is not readily apparent, an owner or other person engaging in a real estate transaction may request information that verifies that the person has a disability, defined as a physical or mental impairment that substantially limits a major life activity. An owner or other person engaging in a real estate transaction shall not request medical records or access to health care providers, and shall not inquire as to the diagnosis, nature, or severity of the person's disability. If the disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request verification that the assistance animal is needed to alleviate one or more symptoms of the person's disability. Verification may be provided by a letter or other communication from the person's treating health care professional, mental health professional, or social worker. Possession of a vest or other distinguishing animal garment, tag, or registration documents that are commonly purchased online and purporting to identify an animal as a service animal or assistance animal shall not constitute valid verification;
- ☐(10)☐ 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 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

[(11)] 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 access, membership, or participation.

(b) For purposes of this section, "assistance animal" means an animal that is needed to perform disability-related work, services, or tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. "Assistance animals" may include but are not limited to service animals, therapy animals, comfort animals, or emotional support animals that may have formal training or may be untrained and may include species other than dogs."¹

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on November 1, 2022.

(Approved June 27, 2022.)

Note

1. So in original.