

Enrolled
Senate Bill 610

Sponsored by Senators KRUSE, MONNES ANDERSON, SHIELDS

CHAPTER

AN ACT

Relating to assistance animals; creating new provisions; amending ORS 90.390, 167.352, 346.687, 346.991, 609.105 and 659A.400; repealing ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 659A.103 to 659A.145.

SECTION 1a. ORS 346.687 is added to and made a part of ORS chapter 659.

SECTION 2. As used in this section and section 3 of this 2013 Act:

(1) "Assistance animal" means a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual.

(2) "Assistance animal trainee" means an animal that is undergoing a course of development and training to do work or perform tasks for the benefit of an individual that directly relate to the disability of the individual.

(3) "Assistance animal trainer" means an individual exercising care, custody and control over an assistance animal trainee during a course of training designed to develop the trainee into an assistance animal.

(4) "Place of public accommodation" means a place of public accommodation as defined in ORS 659A.400.

SECTION 3. (1) A place of public accommodation or of access to state government services, programs or activities may not:

(a) Ask an individual about the nature or extent of a disability that the individual has or may have;

(b) Require an individual to provide documentation proving that an animal is an assistance animal or an assistance animal trainee; or

(c) Notwithstanding any fee or admission charge imposed for pets, require that a person with a disability or an assistance animal trainer pay a fee or admission charge for an assistance animal or assistance animal trainee.

(2) A place of public accommodation or of access to state government services, programs or activities may:

(a) Ask whether an animal is required due to a disability; and

(b) Ask about the nature of the work or task that an animal is trained to do or perform or is being trained to do or perform, unless it is readily apparent that the animal performs or is being trained to perform work or a task for the benefit of a person with a disability.

(3) If a place of public accommodation or of access to state government services, programs or activities customarily charges a person for damages that the person causes to the place, the place may charge a person with a disability or an assistance animal trainer for damages that an assistance animal or assistance animal trainee causes to the place.

(4) A person with a disability or an assistance animal trainer must maintain control of an assistance animal or assistance animal trainee. Except as provided in this subsection, control shall be exerted by means of a harness, leash or other tether. If the use of a harness, leash or other tether would interfere with the ability of the animal to do the work or perform the tasks for which the animal is trained or is being trained, control may be exerted by the effective use of voice commands, signals or other means. If an animal is not under control as required in this subsection, a place of public accommodation or of access to state government services, programs or activities may consider the animal to be out of control for purposes of subsection (5) of this section.

(5)(a) Except as provided in this subsection, a place of public accommodation or of access to state government services, programs or activities may not deny a person with a disability or an assistance animal trainer the right to be accompanied by an assistance animal or assistance animal trainee in any area of the place that is open to the public or to business invitees. A place of public accommodation or of access to state government services, programs or activities may require a person with a disability or an assistance animal trainer to remove an assistance animal or assistance animal trainee if:

(A) The animal is not housebroken; or

(B) The animal is out of control and effective action is not taken to control the animal.

(b) A place of public accommodation or of access to state government services, programs or activities may impose legitimate requirements necessary for the safe operations of the place of public accommodation or the services, programs or activities. The place of public accommodation or of access to state government services, programs or activities shall ensure that the safety requirements are based on actual risks, not on speculation, stereotypes or generalizations about persons with disabilities.

(6) A place of public accommodation or of access to state government services, programs or activities shall make reasonable modifications as necessary to allow an opportunity for a person with a disability who is benefited by the use of an assistance animal to obtain goods, services and the use of the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities. For purposes of this subsection, except as provided in subsections (5) and (7) of this section, in addition to any other applicable accommodation requirement, allowing the presence of the assistance animal is a reasonable modification.

(7) If a place of public accommodation or of access to state government services, programs or activities requires a person with a disability to remove an assistance animal under subsection (5) of this section, the place shall give the person with a disability a reasonable opportunity to obtain goods, services and the use of the advantages, facilities and privileges of the place or the advantages, facilities and privileges of the state government services, programs or activities without the assistance animal's presence.

(8) A place of public accommodation or of access to state government services, programs or activities is not required to provide care or supervision for an assistance animal or assistance animal trainee.

(9) The protection granted under this section to a person with a disability or an assistance animal trainer does not invalidate or limit the remedies, rights and procedures of any other federal, state or local laws that provide equal or greater protection of the rights of a person with a disability, an assistance animal trainer or individuals associated with a person with a disability.

SECTION 4. ORS 659A.400 is amended to read:

659A.400. (1) A place of public accommodation, subject to the exclusion in subsection (2) of this section, means any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements, **transportation** or otherwise.

(2) However, a place of public accommodation does not include any institution, bona fide club or place of accommodation which is in its nature distinctly private.

SECTION 5. ORS 90.390 is amended to read:

90.390. (1) A landlord may not discriminate against a tenant in violation of local, state or federal law, including ORS [346.630, 346.660, 346.690,] 659A.145 and 659A.421.

(2) If the tenant can prove that the landlord violated subsection (1) of this section, the tenant has a defense in any discriminatory action brought by the landlord against the tenant for possession, unless the tenant is in default in rent.

(3) A tenant may prove a landlord's discrimination in violation of ORS 659A.145 or 659A.421 by demonstrating that a facially neutral housing policy has a disparate adverse impact, as described in ORS 659A.425, on members of a protected class.

(4) A landlord may not discriminate against an applicant solely because the applicant was a defendant in an action for possession pursuant to ORS 105.105 to 105.168 that was dismissed or that resulted in general judgment for the defendant prior to the application. This subsection does not apply if the prior action has not resulted in a dismissal or general judgment at the time of the application. If the landlord knowingly acts in violation of this subsection, the applicant may recover actual damages or \$200, whichever is greater.

SECTION 6. ORS 167.352 is amended to read:

167.352. (1) A person commits the crime of interfering with an assistance, a search and rescue or a therapy animal if the person intentionally or knowingly:

(a) Injures or attempts to injure an animal the person knows or reasonably should know is an assistance animal, a search and rescue animal or a therapy animal;

(b) Interferes with an assistance animal while the assistance animal is being used to provide assistance to a person with a [physical impairment] **disability**; or

(c) Interferes with a search and rescue animal or a therapy animal while the animal is being used for search and rescue or therapy purposes.

[2) As used in this section, "assistance animal" and "person with a physical impairment" have the meanings given those terms in ORS 346.680.]

(2) As used in this section, "assistance animal" has the meaning given that term in section 2 of this 2013 Act.

(3) As used in this section and ORS 30.822:

(a) "Search and rescue animal" means that the animal has been professionally trained for, and is actively used for, search and rescue purposes.

(b) "Therapy animal" means [that the animal] **an animal other than an assistance animal that** has been professionally trained for, and is actively used for, therapy purposes.

(4) Interfering with an assistance, a search and rescue or a therapy animal is a Class A misdemeanor.

SECTION 7. ORS 346.687 is amended to read:

346.687. (1) In addition to and not in lieu of any other penalty provided by state law, a person with a [physical impairment] **disability** who uses an assistance animal or the owner of an assistance animal may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the assistance animal. The person with a [physical impairment or] **disability or the** owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks an assistance animal. The action authorized by this subsection may be brought by the person with a [physical impairment or] **disability or the** owner even if the assistance animal was in the custody or under the supervision of another person when the theft or attack occurred.

(2) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as an assistance animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained assistance animal, without any differentiation for the age or the experience of the animal. In addition, the person with a [*physical impairment or*] **disability or the** owner may recover any other costs and expenses, including, but not limited to, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, incurred as a result of the theft of or injury to the animal.

(3) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen but is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the veterinary medical expenses, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, and any other costs and expenses incurred by the person with a [*physical impairment or*] **disability or the** owner as a result of the theft of or injury to the animal.

(4) A cause of action does not arise under this section if the person with a [*physical impairment,*] **disability, the** owner or the person having custody or supervision of the assistance animal was committing a criminal or civil trespass at the time of the theft of or attack on the assistance animal.

(5) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(6) As used in this section, “assistance animal” has the meaning given that term in section 2 of this 2013 Act.

SECTION 8. ORS 609.105 is amended to read:

609.105. Notwithstanding ORS 609.015 or 609.100, a county or city shall not charge a fee to license a dog used as an assistance animal as defined in [*ORS 346.680*] **section 2 of this 2013 Act.**

SECTION 9. ORS 346.991 is amended to read:

346.991. Violation of ORS 346.167[, 346.620 (1) or (2), 346.650 or 346.660 or any of the provisions of ORS 346.680 to 346.690] is a Class C misdemeanor.

SECTION 10. **ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690 are repealed.**

SECTION 11. (1) **Sections 2 and 3 of this 2013 Act, the amendments to ORS 90.390, 167.352, 346.687, 346.991, 609.105 and 659A.400 by sections 4 to 9 of this 2013 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690 by section 10 of this 2013 Act apply to events occurring on or after the effective date of this 2013 Act. Sections 2 and 3 of this 2013 Act, the amendments to ORS 90.390, 346.687 and 346.991 by sections 5, 7 and 9 of this 2013 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690 by section 10 of this 2013 Act do not affect any cause of action for violations of ORS 346.620, 346.630, 346.650, 346.660, 346.685 or 346.690 occurring prior to the effective date of this 2013 Act or any action to recover damages under ORS 346.687 based on actions occurring prior to the effective date of this 2013 Act.**

(2) **A violation of ORS 167.352 occurring prior to the effective date of this 2013 Act is subject to prosecution to the extent provided under ORS 167.352 as set forth in the 2011 Edition of Oregon Revised Statutes.**

(3) **A county or city is not required to refund a license fee charged to a person prior to the effective date of this 2013 Act for an assistance animal that was not exempt from licensing fees under ORS 609.105 as set forth in the 2011 Edition of Oregon Revised Statutes.**

SECTION 12. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate April 29, 2013

Received by Governor:

Repassed by Senate June 18, 2013

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Approved:

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Robert Taylor, Secretary of Senate

.....M,....., 2013

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 13, 2013

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M,....., 2013

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Kate Brown, Secretary of State