House Bill 4053

Sponsored by Representative THOMPSON; Representatives BARKER, BARNHART, BREWER, HOYLE, KRIEGER, SCHAUFLER, WHISNANT, Senators ATKINSON, BATES, NELSON (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Modifies types of animals qualifying as assistance animals for purposes of accessing places of public accommodation and modes of transportation and for purposes of cause of action for harm to assistance animal. Eliminates redundant provisions addressing assistance animals for persons with visual or hearing impairments. Modifies definitions for purposes of offense involving interference with assistance animal. Modifies definition for assistance animal exemption from licensing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 346.680 to 346.690.

SECTION 2. As used in ORS 346.680 to 346.690:

(1) "Assistance animal":

(a) Except as provided in paragraph (b) of this subsection, means a dog that is individually trained to do work or perform tasks for the benefit of a person with a physical or mental impairment.

(b) Means, to the extent that reasonable modifications can be made, a miniature horse that is individually trained to do work or perform tasks for the benefit of a person with a physical or mental impairment.

(2) "Assistance animal trainee" means a dog or, to the extent that reasonable modification can be made, a miniature horse that is undergoing training to do work or perform tasks directly related to a physical or mental impairment.

(3) "Major life activities" means functions such as self-care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(4) "Mode of transportation" means any mode of transportation operating within this state.

(5) "Person with a physical or mental impairment" means a person who has, has a record of having, or is regarded as having, a physical or mental impairment that requires the use of an assistance animal.

(6) "Physical or mental impairment" means a physical, sensory, psychiatric or intellectual or other mental disorder that affects one or more major life activities of a person.

(7) "Public accommodation," except as provided in this subsection, means a place of

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

public accommodation as defined in ORS 659A.400, including, but not limited to, educational institutions, airlines and restaurants. However, the exception stated in ORS 659A.400 (2) is not an exception under ORS 90.390 and 346.680 to 346.690.

(8) "Reasonable modification" means a change in policies, practices or procedures that a public accommodation or mode of transportation can practicably make to allow access by a miniature horse assistance animal, taking into consideration the type, size and weight of the horse, the ability of the public accommodation or mode of transportation to accommodate the horse, the handler's control over the horse, whether the horse is housebroken and whether the presence of the horse compromises legitimate safety concerns necessary for safe operation.

SECTION 3. ORS 346.685 is amended to read:

346.685. (1) A person with a physical **or mental** impairment [*has*] **may not be denied** the right to have an assistance animal with the person, and a trainer [*has*] **may not be denied** the right to have an assistance animal or assistance animal trainee with the trainer, in any [*place of*] public accommodation or on any mode of transportation so long as the person or trainer controls the behavior of the animal.

(2) A trainer or a person with a physical **or mental** impairment [*is*] **may** not **be** required to pay an additional fee or admission charge for the assistance animal **or assistance animal trainee**.

(3) The assistance animal shall be allowed to accompany [*its owner*] **the person with a physical or mental impairment** in an ambulance or other mode of transportation in the event of a medical emergency. If the [*owner*] **person** is unconscious, the assistance animal shall be placed in an emergency veterinary clinic until the person regains consciousness and can make arrangements for the animal, or a relative responsible for the injured person is contacted and can make arrangements for the animal, or until the injured person dies, in which case the authorities will attempt to contact the school, where the animal was trained, for further action.

(4) A trainer or a person with a physical **or mental** impairment is liable for any damages done to a [*place of*] public accommodation or to any mode of transportation by the assistance animal.

SECTION 4. 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 **or mental** impairment 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 **or mental** impairment 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 **or mental** impairment 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 **or mental** impairment 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 **or mental** impairment 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 **or mental** impairment, **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.

SECTION 5. ORS 346.690 is amended to read:

346.690. (1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a person with a physical **or mental** impairment on the basis of the person's use or possession of an assistance animal.

(2) A person with a physical **or mental** impairment has a cause of action to recover compensatory damages or $200, whichever is greater, from any landlord who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person's use or possession of an assistance animal. 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.

(3) A person with a physical **or mental** impairment may not be required to pay a fee or deposit for an assistance animal.

(4) A person with a physical **or mental** impairment is liable for any damages done to the dwelling unit by the assistance animal.

SECTION 6. 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*] **346.685 or** 346.690 is a Class C misdemeanor.

SECTION 7. 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 8. 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 **or mental** impairment; 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 **or mental** impairment" have the meanings given those terms in [*ORS 346.680*] **section 2 of this 2012 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 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 9. 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 2012 Act**.

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

SECTION 11. (1) Section 2 of this 2012 Act, the amendments to ORS 90.390, 167.352, 346.685, 346.687, 346.690, 346.991 and 609.105 by sections 3 to 9 of this 2012 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660 and 346.680 by section 10 of this 2012 Act apply to events occurring on or after the effective date of this 2012 Act. Section 2 of this 2012 Act, the amendments to ORS 90.390, 346.685, 346.687, 346.690 and 346.991 by sections 3 to 7 of this 2012 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660 and 346.680 by section 10 of this 2012 Act do not affect any cause of action for violations of ORS 90.390, 346.620, 346.630, 346.650, 346.660, 346.685 or 346.690 occurring prior to the effective date of this 2012 Act or any action to recover damages under ORS 346.687 based on actions occurring prior to the effective date of this 2012 Act.

(2) A violation of ORS 167.352 occurring prior to the effective date of this 2012 Act is subject to prosecution to the extent provided under ORS 167.352 and 346.680 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 2012 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 2012 Act being necessary for the immediate preservation of the public

peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.