

Senate Bill 610

Sponsored by Senator KRUSE

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 conditions qualifying as disability and types of animals qualifying as assistance animals for purposes of accessing places of public accommodation and places of access to state government services, programs or activities and for purposes of cause of action for harm to assistance animal. Requires places of public accommodation or of access to state government services, programs or activities to make reasonable modification of policies, practices and procedures as necessary to accommodate presence of assistance animal or assistance animal trainee.

Establishes permissible and prohibited inquiries and requirements regarding animals for places of public accommodation or of access to state government services, programs or activities.

Creates crime of misrepresenting a pet as an assistance animal, punishable as Class C misdemeanor.

Creates crime of possessing paraphernalia for misrepresenting a pet as an assistance animal, punishable as Class A misdemeanor.

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.

A BILL FOR AN ACT

1
2 Relating to assistance animals; creating new provisions; amending ORS 90.390, 167.352, 346.687,
3 346.991 and 609.105; and repealing ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660,
4 346.680, 346.685 and 346.690.

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

6 **SECTION 1. Sections 2 and 3 of this 2013 Act and ORS 346.687 are added to and made a**
7 **part of ORS 659A.103 to 659A.145.**

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

9 (1) "Assistance animal" means a dog that has been individually trained to do work or
10 perform tasks for the benefit of an individual that directly relate to the disability of the in-
11 dividual. To the extent that reasonable modifications can be made, "assistance animal" also
12 means a miniature horse that is individually trained to do work or perform tasks for the
13 benefit of an individual that directly relate to the disability of the individual.

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

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

20 (4) "Disability," notwithstanding ORS 659A.104, includes, but is not limited to, a physical,
21 sensory or neurological disability or psychiatric, intellectual or other mental condition that
22 affects one or more major life activities as described in ORS 659A.104.

23 (5) "Person with a disability" means a person who has, has a record of having, or is re-

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.

1 garded as having, a condition described in subsection (4) of this section that is benefited by
 2 the use of an assistance animal.

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

5 (7) "Reasonable modification" means a change in policies, practices or procedures that a
 6 place of public accommodation or of access to state government services, programs or ac-
 7 tivities can practicably make to allow access by an assistance animal, taking into consider-
 8 ation the type, size and weight of the animal, the ability of the place to accommodate the
 9 animal, the handler's control over the animal, whether the animal is housebroken and
 10 whether the presence of the animal compromises legitimate safety concerns necessary for
 11 safe operations.

12 (8) "State government" has the meaning given that term in ORS 174.111.

13 **SECTION 3.** (1) A place of public accommodation or of access to state government ser-
 14 vices, programs or activities may not:

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

17 (b) Require an individual to provide documentation proving that an animal is an assist-
 18 ance animal or an assistance animal trainee; or

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

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

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

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

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

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

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

1 **grams or activities may require a person with a disability or an assistance animal trainer to**
2 **remove an assistance animal or assistance animal trainee if:**

3 **(a) The animal is not housebroken; or**

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

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

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

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

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

27 **SECTION 4. (1) As used in this section and section 5 of this 2013 Act, "assistance**
28 **animal" and "place of public accommodation" have the meaning given those terms in section**
29 **2 of this 2013 Act.**

30 **(2) A person commits the crime of misrepresenting a pet as an assistance animal if the**
31 **person brings an animal that is not an assistance animal into a place of public accommo-**
32 **dation or of access to state government services, programs or activities with the intent to**
33 **misrepresent the animal as an assistance animal.**

34 **(3) Misrepresenting a pet as an assistance animal is a Class C misdemeanor.**

35 **SECTION 5. (1) As used in this section, "assistance animal paraphernalia" means assist-**
36 **ance animal identification badges or cards. "Assistance animal paraphernalia" also means**
37 **vests, capes, jackets, backpacks or harnesses, leashes or other tethers that can be worn by**
38 **an animal and that are marked with insignia indicating that the animal is an assistance an-**
39 **imal.**

40 **(2) A person commits the crime of possessing paraphernalia for misrepresenting a pet**
41 **as an assistance animal if the person owns or possesses assistance animal paraphernalia with**
42 **the intent that the paraphernalia be used in the furtherance of misrepresenting a pet as an**
43 **assistance animal.**

44 **(3) Possessing paraphernalia for misrepresenting a pet as an assistance animal is a Class**
45 **A misdemeanor.**

1 **SECTION 6.** ORS 90.390 is amended to read:

2 90.390. (1) A landlord may not discriminate against a tenant in violation of local, state or federal
3 law, including ORS [346.630, 346.660, 346.690,] 659A.145 and 659A.421 **or section 3 of this 2013**
4 **Act.**

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

8 (3) A tenant may prove a landlord's discrimination in violation of ORS 659A.145 or 659A.421 **or**
9 **section 3 of this 2013 Act** by demonstrating that a facially neutral housing policy has a disparate
10 adverse impact, as described in ORS 659A.425, on members of a protected class.

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

17 **SECTION 7.** ORS 167.352 is amended to read:

18 167.352. (1) A person commits the crime of interfering with an assistance, a search and rescue
19 or a therapy animal if the person intentionally or knowingly:

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

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

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

26 (2) As used in this section, "assistance animal" and "person with a [*physical impairment*] **disa-**
27 **bility**" have the meanings given those terms in [ORS 346.680] **section 2 of this 2013 Act.**

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

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

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

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

35 **SECTION 8.** ORS 346.687 is amended to read:

36 346.687. (1) In addition to and not in lieu of any other penalty provided by state law, a person
37 with a [*physical impairment*] **disability** who uses an assistance animal or the owner of an assistance
38 animal may bring an action for economic and noneconomic damages against any person who steals
39 or, without provocation, attacks the assistance animal. The person with a [*physical impairment or*]
40 **disability or the** owner may also bring an action for such damages against the owner of any animal
41 that, without provocation, attacks an assistance animal. The action authorized by this subsection
42 may be brought by the person with a [*physical impairment or*] **disability or the** owner even if the
43 assistance animal was in the custody or under the supervision of another person when the theft or
44 attack occurred.

45 (2) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of

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

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

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

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

25 (6) **As used in this section, “assistance animal” and “person with a disability” have the**
 26 **meanings given those terms in section 2 of this 2013 Act.**

27 **SECTION 9.** ORS 609.105 is amended to read:

28 609.105. Notwithstanding ORS 609.015 or 609.100, a county or city shall not charge a fee to li-
 29 cense a dog used as an assistance animal as defined in [*ORS 346.680*] **section 2 of this 2013 Act.**

30 **SECTION 10.** ORS 346.991 is amended to read:

31 346.991. Violation of ORS 346.167[, 346.620 (1) or (2), 346.650 or 346.660 or any of the provisions
 32 of ORS 346.680 to 346.690] is a Class C misdemeanor.

33 **SECTION 11.** ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and
 34 **346.690 are repealed.**

35 **SECTION 12.** (1) **Sections 2 to 5 of this 2013 Act, the amendments to ORS 90.390, 167.352,**
 36 **346.687, 346.991 and 609.105 by sections 6 to 10 of this 2013 Act and the repeal of ORS 346.610,**
 37 **346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690 by section 11 of this 2013**
 38 **Act apply to events occurring on or after the effective date of this 2013 Act. Sections 2 and**
 39 **3 of this 2013 Act, the amendments to ORS 90.390, 346.687 and 346.991 by sections 6, 8 and 10**
 40 **of this 2013 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660,**
 41 **346.680, 346.685 and 346.690 by section 11 of this 2013 Act do not affect any cause of action**
 42 **for violations of ORS 90.390, 346.620, 346.630, 346.650, 346.660, 346.685 or 346.690 occurring prior**
 43 **to the effective date of this 2013 Act or any action to recover damages under ORS 346.687**
 44 **based on actions occurring prior to the effective date of this 2013 Act.**

45 (2) A violation of ORS 167.352 occurring prior to the effective date of this 2013 Act is

1 subject to prosecution to the extent provided under ORS 167.352 as set forth in the 2011
2 Edition of Oregon Revised Statutes.

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