

# Senate Bill 788

Sponsored by Senator SHIELDS; Senator MONNES ANDERSON

## 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 place 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. Makes violation subject to filing of complaint by Attorney General or Commissioner of Bureau of Labor and Industries and subject to civil action by aggrieved person.

Establishes permissible and prohibited inquiries and requirements regarding animals for places of public accommodation or of access to state government services, programs or activities. 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, 609.105 and 659A.825; and repealing ORS 346.610, 346.620, 346.630, 346.640, 346.650,  
4 346.660, 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 an animal that has been individually trained to do work**  
10 **or perform tasks for the benefit of an individual that directly relate to a disability of the**  
11 **individual.**

12 (2) **"Assistance animal trainee" means an animal that is undergoing a course of devel-**  
13 **opment and training to do work or perform tasks directly related to a disability.**

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

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

20 (5) **"Person with a disability" means a person who has, has a record of having, or is re-**  
21 **garded as having, a condition described in subsection (4) of this section that is benefited by**  
22 **the use of an assistance animal.**

23 (6) **"Place of public accommodation" means a place of public accommodation described in**  
24 **ORS 659A.400 (1) or a private institution or club.**

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

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

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

12 (a) Ask a person about the nature or extent of a disability that the person has or may  
13 have;

14 (b) Require a person to provide documentation proving that an animal is trained or re-  
15 ceiving training as an assistance animal; or

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

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

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

22 (b) Ask about the nature of the work or task that an animal is trained or is being trained  
23 to perform unless it is readily apparent that the animal performs or is being trained to per-  
24 form work or a task for the benefit of a person with a disability.

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

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

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

1 (a) The animal is not housebroken; or

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

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

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

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

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

26 **SECTION 4.** ORS 90.390 is amended to read:

27 90.390. (1) A landlord may not discriminate against a tenant in violation of local, state or federal  
 28 law, including ORS [346.630, 346.660, 346.690,] 659A.145 and 659A.421 **or section 3 of this 2013**  
 29 **Act.**

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

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

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

42 **SECTION 5.** ORS 167.352 is amended to read:

43 167.352. (1) A person commits the crime of interfering with an assistance, a search and rescue  
 44 or a therapy animal if the person intentionally or knowingly:

45 (a) Injures or attempts to injure an animal the person knows or reasonably should know is an

1 assistance animal, a search and rescue animal or a therapy animal;

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

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

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

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

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

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

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

15 **SECTION 6.** ORS 346.687 is amended to read:

16 346.687. (1) In addition to and not in lieu of any other penalty provided by state law, a person  
17 with a [*physical impairment*] **disability** who uses an assistance animal or the owner of an assistance  
18 animal may bring an action for economic and noneconomic damages against any person who steals  
19 or, without provocation, attacks the assistance animal. The person with a [*physical impairment or*]  
20 **disability or the** owner may also bring an action for such damages against the owner of any animal  
21 that, without provocation, attacks an assistance animal. The action authorized by this subsection  
22 may be brought by the person with a [*physical impairment or*] **disability or the** owner even if the  
23 assistance animal was in the custody or under the supervision of another person when the theft or  
24 attack occurred.

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

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

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

45 (5) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under

1 this section. The court may award reasonable attorney fees and expert witness fees incurred by a  
 2 defendant who prevails in the action if the court determines that the plaintiff had no objectively  
 3 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse  
 4 decision of a trial court.

5 **SECTION 7.** ORS 609.105 is amended to read:

6 609.105. Notwithstanding ORS 609.015 or 609.100, a county or city shall not charge a fee to li-  
 7 cense a dog used as an assistance animal as defined in [ORS 346.680] **section 2 of this 2013 Act.**

8 **SECTION 8.** ORS 659A.825 is amended to read:

9 659A.825. (1)(a) If the Attorney General or the Commissioner of the Bureau of Labor and In-  
 10 dustries has reason to believe that any person has committed an unlawful practice, the Attorney  
 11 General or the commissioner may file a complaint in the same manner as provided for a complaint  
 12 filed by a person under ORS 659A.820.

13 (b) If the Attorney General or the commissioner has reason to believe that a violation of ORS  
 14 659A.403, 659A.406 or 659A.409 has occurred, the Attorney General or the commissioner may file a  
 15 complaint under this section against any person acting on behalf of a place of public accommodation  
 16 and against any person who has aided or abetted in that violation. **If the Attorney General or the  
 17 commissioner has reason to believe that a violation of section 3 of this 2013 Act has oc-  
 18 curred, the Attorney General or the commissioner may file a complaint under this section  
 19 against any person acting on behalf of a place of public accommodation or of access to state  
 20 government services, programs or activities and against any person who has aided or abetted  
 21 in that violation.**

22 (c) If the Attorney General or the commissioner has reason to believe that an unlawful practice  
 23 under ORS 659A.145 or 659A.421 or discrimination under federal housing law has occurred or is  
 24 about to occur, the Attorney General or the commissioner may file a complaint in the same manner  
 25 as a person filing a complaint under ORS 659A.820.

26 (2) If the commissioner files a complaint under this section alleging an unlawful practice other  
 27 than an unlawful employment practice, or if a person files a complaint under ORS 659A.820 alleging  
 28 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law,  
 29 the commissioner may also issue a temporary cease and desist order requiring any respondent  
 30 named in the complaint to refrain from the unlawful practice alleged. A temporary cease and desist  
 31 order under this section may contain any provision that could be included in a cease and desist  
 32 order issued after a hearing under ORS 659A.850.

33 **SECTION 9.** ORS 346.991 is amended to read:

34 346.991. Violation of ORS 346.167[ *346.620 (1) or (2), 346.650 or 346.660 or any of the provisions*  
 35 *of ORS 346.680 to 346.690*] is a Class C misdemeanor.

36 **SECTION 10.** ORS 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and  
 37 346.690 are repealed.

38 **SECTION 11.** (1) Sections 2 and 3 of this 2013 Act, the amendments to ORS 90.390, 167.352,  
 39 346.687, 346.991, 609.105 and 659A.825 by sections 4 to 9 of this 2013 Act and the repeal of ORS  
 40 346.610, 346.620, 346.630, 346.640, 346.650, 346.660, 346.680, 346.685 and 346.690 by section 10 of  
 41 this 2013 Act apply to events occurring on or after the effective date of this 2013 Act.  
 42 Sections 2 and 3 of this 2013 Act, the amendments to ORS 90.390, 346.687 and 346.991 by  
 43 sections 4, 6 and 9 of this 2013 Act and the repeal of ORS 346.610, 346.620, 346.630, 346.640,  
 44 346.650, 346.660, 346.680, 346.685 and 346.690 by section 10 of this 2013 Act do not affect any  
 45 cause of action for violations of ORS 90.390, 346.620, 346.630, 346.650, 346.660, 346.685, 346.690

1 or 346.991 occurring prior to the effective date of this 2013 Act or any action to recover  
2 damages under ORS 346.687 based on actions occurring prior to the effective date of this 2013  
3 Act.

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

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

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