

## 1 HOUSE BILL NO. 439

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SERVICE ANIMALS;  
6 DEFINING THE TYPES OF ANIMALS ALLOWED AS SERVICE ANIMALS; ALLOWING FOR CERTAIN  
7 QUESTIONS TO BE ASKED OF A PERSON WHO REPRESENTS THAT THE PERSON HAS A DISABILITY  
8 AND IS ACCOMPANIED BY A SERVICE ANIMAL; REQUIRING THAT THE ANIMAL BE UNDER THE  
9 HANDLER'S CONTROL; REQUIRING CERTAIN POSTING PROVISIONS; CREATING PROCEDURES FOR  
10 IDENTIFYING AND EXCUSING A MISREPRESENTED SERVICE ANIMAL; ALLOWING COMPLAINTS OF A  
11 MISREPRESENTED SERVICE ANIMAL TO BE FILED WITH THE COMMISSION FOR HUMAN RIGHTS;  
12 CREATING A MISDEMEANOR OFFENSE FOR THE MISREPRESENTATION OF A SERVICE ANIMAL; AND  
13 AMENDING 49-4-203 AND 49-4-214, MCA."

14  
15 ~~WHEREAS, instances of misrepresenting an animal as a service animal have increased, which puts at~~  
16 ~~risk those around the misrepresented service animal and also risks further discrimination against those with~~  
17 ~~disabilities; and~~

18 WHEREAS, UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. 12101, ET SEQ., DOGS THAT  
19 HAVE BEEN TRAINED TO DO WORK OR PERFORM A TASK FOR THE BENEFIT OF A PERSON WITH A DISABILITY AND WHOSE  
20 WORK OR TASK IS DIRECTLY RELATED TO THE INDIVIDUAL'S DISABILITY MEET THE DEFINITION OF A SERVICE ANIMAL; AND

21 WHEREAS, PROPERLY TRAINED SERVICE ANIMALS PLAY A VITAL ROLE IN HELPING INDIVIDUALS WITH DISABILITIES  
22 ACHIEVE AND MAINTAIN INDEPENDENCE, AND THE STATUS OF SERVICE ANIMALS IS THEREFORE PROTECTED BY FEDERAL  
23 AND STATE LAWS REQUIRING PLACES OF PUBLIC ACCOMMODATION, INCLUDING RESTAURANTS, THEATERS, STORES,  
24 HOSPITALS, AND MORE TO ALLOW ANY ANIMAL THAT IS PRESENTED AS A SERVICE ANIMAL OR A SERVICE ANIMAL IN TRAINING  
25 INTO THE PLACE OF PUBLIC ACCOMMODATION; AND

26 WHEREAS, THERE IS AN INCREASING NUMBER OF OCCURRENCES OF PEOPLE BRINGING PETS, THERAPY  
27 ANIMALS, AND EMOTIONAL SUPPORT ANIMALS INTO A PLACE WHERE THE ANIMAL WOULD OTHERWISE NOT BE ALLOWED TO  
28 ENTER BY PASSING THE ANIMAL OFF AS A SERVICE ANIMAL OR SERVICE ANIMAL IN TRAINING, EITHER BY ORAL  
29 MISREPRESENTATION, PLACING A MISLEADING VEST OR OTHER ARTICLE ON THE ANIMAL, OR PRESENTING A FALSIFIED  
30 CERTIFICATE DESPITE KNOWING THAT THE ANIMAL IS NOT A SERVICE ANIMAL; AND

1 WHEREAS, the use of a misrepresented service animal erodes the public's trust of service animals that  
 2 are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide,  
 3 aid, or protect.

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6

7 **Section 1.** Section 49-4-203, MCA, is amended to read:

8 **"49-4-203. Definitions.** (1) "Housing accommodation" means any real property or portion of real  
 9 property that is used or occupied or is intended, arranged, or designed to be used or occupied as the home,  
 10 residence, or sleeping place of one or more human beings. The term does not include any single-family residence  
 11 the occupants of which furnish for compensation not more than one room within the residence.

12 (2) "Service animal" means a dog or ~~other animal~~ miniature horse individually trained to provide  
 13 assistance to an individual with a disability. The term does not include an emotional support animal."

14

15 **Section 2.** Section 49-4-214, MCA, is amended to read:

16 **"49-4-214. Right to be accompanied by service animal -- identification for service animals in**  
 17 **training.** (1) A person with a disability has the right to be accompanied by a service animal or a service animal  
 18 in training with identification complying with subsection (4) in any of the places mentioned in 49-4-211(2) without  
 19 being charged extra for the service animal. The person with a disability is liable for any damage done to the  
 20 property by the animal.

21 (2) A person with a disability who has a service animal or who obtains a service animal is entitled to full  
 22 and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. The person with a  
 23 disability may not be required to pay extra compensation for the service animal but is liable for any damage done  
 24 to the premises by the service animal.

25 (3) A person who is training a service animal is entitled to the same rights and assumes the same  
 26 responsibilities granted to a person with a disability in this section.

27 (4) For the purposes of this section, a service animal in training ~~that is a dog~~ shall wear a leash, collar,  
 28 cape, harness, or backpack that identifies in writing that the ~~dog~~ ANIMAL is a service animal in training. ~~Other~~  
 29 ~~service animals in training must also be identifiable by written identification as a service animal in training.~~ The  
 30 written identification for service animals in training must be visible and legible from a distance of at least 20 feet.

1 (5) If a person has a service animal that provides assistance and the person wishes to access the places  
 2 and accommodations mentioned in 49-4-211 accompanied by the animal in its capacity as a service animal:

3 (a) the animal must be under the handler's control as required under 28 CFR 35.136 that is in effect as  
 4 of [the effective date of this act]; and

5 (b) the person may be asked by a representative of the place or accommodation:

6 (i) whether the animal is a service animal that is required because of a disability; and

7 (ii) to describe the work or task the animal is trained to perform.

8 (6) (A) If the animal described in subsection (5) is not under the handler's control or the handler is unable  
 9 to answer the allowed questions adequately AND THE HANDLER HAS NOT TAKEN EFFECTIVE ACTION TO CONTROL THE  
 10 ANIMAL OR THE ANIMAL IS NOT HOUSEBROKEN, the handler may be asked to remove the animal from the place or  
 11 accommodation.

12 (B) A PLACE OR ACCOMMODATION THAT ASKS THAT AN ANIMAL BE REMOVED FROM THE PLACE OR  
 13 ACCOMMODATION AS PROVIDED IN SUBSECTION (6)(A) SHALL OFFER SERVICES TO THE ANIMAL'S HANDLER AFTER THE  
 14 ANIMAL IS REMOVED.

15 (7) If a place or accommodation mentioned in 49-4-211 posts a notice that dogs or other animals are  
 16 prohibited on the premises, the place or accommodation must also indicate that a person may be accompanied  
 17 by a service animal subject to the provisions of this chapter."

18  
 19 **NEW SECTION. Section 3. Misrepresentation of a service animal -- complaint -- investigation.** (1)

20 A person who knowingly and willfully represents that an animal is a trained service animal by fitting the animal  
 21 with a leash, collar, cape, harness, backpack, or sign that identifies the animal as a service animal or claims  
 22 verbally or in writing that the animal is a service animal in order to access the places and accommodations  
 23 mentioned in 49-4-211 with the animal, and it is found that the animal is not properly trained to provide services  
 24 required of a service animal, the person may be asked to remove the animal from a place or accommodation as  
 25 mentioned in 49-4-211 and ~~a complaint may be filed against the person as provided in subsection (3)~~ LOCAL LAW  
 26 ENFORCEMENT MAY BE CALLED TO INVESTIGATE.

27 (2) An animal may be determined to lack the proper training required of a service animal if the animal  
 28 exhibits unwanted behaviors including:

29 ~~\_\_\_\_\_ (a) barking inappropriately;~~

30 ~~\_\_\_\_\_ (b) urinating or defecating inappropriately;~~

1 ~~\_\_\_\_\_ (c) displaying unwanted attention toward other patrons;~~  
 2 ~~\_\_\_\_\_ (d) eating off a floor, table, or other surface; or~~  
 3 ~~\_\_\_\_\_ (e) displaying disruptive behavior that requires excessive efforts from the handler to control~~ IS NOT  
 4 HOUSEBROKEN OR THE ANIMAL IS NOT UNDER THE CONTROL OF THE HANDLER AND THE ANIMAL'S HANDLER DOES NOT TAKE  
 5 EFFECTIVE ACTION TO CONTROL THE ANIMAL.

6 (3) IF LOCAL LAW ENFORCEMENT IS CALLED TO INVESTIGATE AS PROVIDED IN SUBSECTION (1), WRITTEN RESULTS  
 7 OF THE INVESTIGATION MUST BE PROVIDED TO THE PLACE OR ACCOMMODATION WHERE THE INSTANCE OCCURRED AND  
 8 TO THE HANDLER OF THE ANIMAL IN QUESTION.

9 ~~(3)(4)~~ (a) A representative of a place or accommodation mentioned in 49-4-211 who suspects that an  
 10 animal is being misrepresented as a service animal to gain entry to the place or accommodation may file a  
 11 complaint with the commission for human rights established under 2-15-1706. The complaint must be written and  
 12 verified and must state the particulars of the alleged misrepresentation.

13 ~~\_\_\_\_\_ (b) The commission shall investigate the complaint within 30 days of receipt of the complaint.~~

14 ~~\_\_\_\_\_ (c) If the commission concludes that a misrepresentation has not occurred, the commission shall dismiss~~  
 15 ~~the complaint.~~

16 ~~\_\_\_\_\_ (d) If the commission concludes that a misrepresentation has occurred, the commission shall either~~  
 17 ~~provide the results of its investigation to the local law enforcement entity having jurisdiction or may certify the~~  
 18 ~~complaint for hearing pursuant to 49-2-505.~~

19 (B) A REPRESENTATIVE MAY NOT FILE A COMPLAINT UNLESS THE PLACE OR ACCOMMODATION HAS POSTED  
 20 CONSPICUOUS PUBLIC NOTICE THAT THE PLACE OR ACCOMMODATION:

21 (I) DOES NOT ALLOW ANIMALS OTHER THAN SERVICE ANIMALS; AND

22 (II) RESERVES THE RIGHT TO FILE COMPLAINTS ALLEGING THE MISREPRESENTATION OF SERVICE ANIMALS UNDER  
 23 THIS SECTION.

24 (C) THE NOTICE REQUIRED IN SUBSECTION (4)(B) MAY INCLUDE NOTICE OF THE QUESTIONS ALLOWED UNDER  
 25 [SECTION 2(5)(B)] AND THAT THE ANIMAL MUST BE HOUSEBROKEN AND UNDER THE HANDLER'S CONTROL.

26  
 27 NEW SECTION. Section 4. Misrepresentation of a service animal -- misdemeanor -- penalty. (1)

28 A person who misrepresents a service animal as provided in [section 3] may be found guilty of a misdemeanor  
 29 and upon conviction shall be punished by a fine of not more than \$100. IF:

30 (A) THE PERSON WAS PREVIOUSLY GIVEN A WRITTEN WARNING REGARDING THE FACT THAT IT IS ILLEGAL TO

1 INTENTIONALLY MISREPRESENT A SERVICE ANIMAL; AND  
 2 (B) THE PERSON CONTINUED TO MISREPRESENT THE ANIMAL AS A SERVICE ANIMAL IN ORDER TO GAIN ANY OF THE  
 3 RIGHTS OR PRIVILEGES AFFORDED TO A SERVICE ANIMAL.

4 (2) A PERSON WHO VIOLATES SUBSECTION (1) SHALL BE PUNISHED AS FOLLOWS:

5 (A) FOR A FIRST OFFENSE, A FINE OF \$50;

6 (B) FOR A SECOND OFFENSE, A FINE OF NOT LESS THAN \$75 OR MORE THAN \$200; AND

7 (C) FOR A THIRD OR SUBSEQUENT OFFENSE, A FINE OF NOT LESS THAN \$100 OR MORE THAN \$1,000.

8 ~~(2)(3)~~ In addition to the penalty provided in subsection (1), a person convicted of the offense of ~~fraudulent~~  
 9 ~~representation~~ MISREPRESENTATION of a service animal under subsection (1) may be required to perform  
 10 community service for an organization that advocates on the behalf of persons with disabilities.

11  
 12 NEW SECTION. SECTION 5. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE THAT THE  
 13 DEPARTMENT OF LABOR AND INDUSTRY IMPLEMENT AND COMPLY WITH [THIS ACT] WITHIN EXISTING RESOURCES.

14  
 15 NEW SECTION. Section 6. Codification instruction. [Sections 3 and 4] are intended to be codified  
 16 as an integral part of Title 49, chapter 4, part 2, and the provisions of Title 49, chapter 4, part 2, apply to [sections  
 17 3 and 4].

18 - END -