



## LAWS ADDRESSING SERVICE ANIMALS AND ASSISTANCE ANIMALS

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According to the U.S. Census Bureau's American Community Survey, approximately 10.3 percent of Colorado's population reported having a disability in 2015.<sup>1</sup> Many of those individuals use a service animal or assistance animal to cope with their disability. This *issue brief* defines the terms "service animal" and "assistance animal," and discusses the federal and state laws that address them.

### Federal Laws

**Americans with Disabilities Act.** The Americans with Disabilities Act of 1990 (ADA) is a civil rights law that prohibits discrimination based on a person's disability. The ADA requires covered entities, including state and local governments, businesses, and nonprofit organizations that provide goods or services to the public, to make reasonable accommodations for persons with disabilities. The use of a service animal is considered a reasonable accommodation. ADA regulations define a "service animal" as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.<sup>2</sup> A dog that provides its owner emotional support or comfort does not meet the definition of a

service animal. Although the definition of a service animal does not include animals other than dogs, additional ADA regulations permit the use of a miniature horse that has been trained to work or perform tasks for the benefit of a person with a disability in certain circumstances.<sup>3</sup>

Examples of work or tasks performed by service animals include a dog alerting a diabetic person when his or her blood sugar reaches unsafe levels, reminding a depressed person to take his or her medication, or detecting the onset of a seizure and protecting the person during the seizure. Service animals are not required to be professionally trained or to wear a vest, patch, ID tag, or special harness. Further, the presence of a vest, patch, ID tag, or harness does not confer any special privileges or protections to the owner of an animal that does not meet the definition of a service animal.

If a person's disability or the work performed by his or her service animal is not readily apparent, a covered entity may ask the following questions in order to verify that the animal is a service animal: 1) Is this a service animal that is required because of a disability? and 2) What work or tasks has the animal been trained to perform? A covered entity cannot require the person to provide documentation that the service animal is trained, and can only deny access to the service animal if: it is out of control and the handler does not take effective

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<sup>1</sup>Erickson, W., Lee, C., von Schrader, S. (2017). Disability Statistics from the American Community Survey. Ithaca, NY: Cornell University Yang-Tan Institute. Retrieved from Cornell University Disability Statistics website: [www.disabilitystatistics.org](http://www.disabilitystatistics.org).

<sup>2</sup>28 C.F.R. § 36.104.

<sup>3</sup>28 C.F.R. § 35.136.

steps to control it; it is not housebroken; or it poses a threat to the health and safety of others that cannot be reduced to an acceptable level by making other reasonable modifications.

**Fair Housing Act.** The Fair Housing Act (FHAct) protects people from discrimination when they are renting, buying, or securing financing for any housing. Under the FHAct, housing providers must make reasonable accommodations for a disabled person if the accommodations are necessary for the person to use the housing. A reasonable accommodation includes allowing the use of an assistance animal. An “assistance animal” is defined as an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms of a person’s disability. It is not necessary for an assistance animal to be individually trained or certified for the purposes of making a reasonable accommodation.

If a person’s disability is not readily apparent, a housing provider may ask the person for documentation of the disability and their disability-related need for an assistance animal. The documentation may come from a physician, psychiatrist, social worker, or other mental health professional, and is sufficient if it establishes that the person has a disability and that the animal will provide some kind of disability-related assistance or emotional support. A housing provider may not ask an applicant to provide access to the person’s medical records. Additionally, a housing provider cannot charge a pet deposit for a disabled person who uses an assistance animal. Individuals who believe that a request for a reasonable accommodation has been improperly denied may file a complaint with the U.S. Department of Housing and Urban Development.

## Colorado Law

State law enacted in 2016 created class 2 petty offenses for intentional misrepresentation of entitlement to an assistance animal and to a service animal, respectively. Additionally, certain medical professionals, when approached by a patient seeking an assistance animal, to make a written finding regarding

whether the patient has a disability and whether the need for the animal is related to that disability, or that there is insufficient evidence to make a disability determination.

**Definitions.** For the purposes of state law, “service animal” has the same meaning as it does under the ADA, and includes the use of a miniature horse. Similarly, “assistance animal” has the same meaning as an animal that qualifies as a reasonable accommodation under the FHAct.

**Violations.** A person commits intentional misrepresentation of an assistance animal if: the person intentionally misrepresents entitlement to an assistance animal for the purpose of obtaining any of the rights or privileges set forth in state or federal law for an individual with a disability as a reasonable accommodation in housing; the person was previously given a written or verbal warning regarding the fact that it is illegal to intentionally misrepresent entitlement to an assistance animal; and the person knows that he or she does not have a disability or that the animal is not an assistance animal.<sup>4</sup>

A person commits intentional misrepresentation of a service animal if: the person intentionally misrepresents an animal in his or her possession as a service animal or service-animal-in-training for the purpose of obtaining any of the rights or privileges for persons with service animals guaranteed by Colorado law; the person was previously given a written or verbal warning that it is illegal to intentionally misrepresent a service animal; and the person knows that the animal is not a service animal or service-animal-in-training.<sup>5</sup>

**Penalties.** The penalties for committing either of the violations described above are the same. A first offense is punishable by a fine of \$45. A second offense is punishable by a fine of between \$50 and \$200, and a third or subsequent offense is punishable by a fine of between \$100 and \$500.

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<sup>4</sup>Section 18-13-107.3, C.R.S.

<sup>5</sup>Section 18-13-107.7, C.R.S. (Misrepresentation of a service animal); Section 24-34-803, C.R.S. (Rights of individuals with service animals).