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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Marti Buscaglia
Office of the Governor

FROM: April Simpson, Office of the Lieutenant Governor 465.4081

DATE: March 21, 2019

RE: Filed Permanent Regulations: Alaska State Commission for Human Rights

Alaska State Commission for Human Rights: Service and Alert Animals (6 AAC 30.210-.990)

Attorney General File:	2018200887
Regulation Filed:	3/21/2019
Effective Date:	4/20/2019
Print:	230, July 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF ALASKA STATE COMMISSION FOR HUMAN RIGHTS

The attached 18 pages of regulations, dealing with procedures for investigations, determinations, conciliations, and hearings before the Human Rights Commission, including adding a proposed new regulatory provision dealing with service animals, are certified to be a correct copy of the regulation changes that the Alaska State Commission for Human Rights adopted at its February 28, 2019 meeting, under the authority of AS 18.80.050 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alaska State Commission for Human Rights paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 2/28/19

Brandon Nakasato

Brandon H. Nakasato, Chairperson

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

MARCH 21, 20 19 at 4:53 PM., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer

Kevin Meyer, Lieutenant Governor

Effective: April 20, 2019.

Register: 230, July 2019

6 AAC 30.210 (a) is amended to read:

6 AAC 30.210. Complaints by persons [INDIVIDUALS]. (a) **A person** [AN INDIVIDUAL] aggrieved by an alleged practice prohibited by AS 18.80 may file a written complaint with the commission. A complaint may be filed in person, [OR] by mail, **or in electronic form** at any commission office.

6 AAC 30.210 (c)(9) is repealed:

(9) repealed 4/20/2019.

Eff. 12/07/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61; am 5/2/79, Register 70; am 3/12/81, Register 77; am 8/9/84, Register 91; am 4/20/2019, Register 230)

Authority: AS 18.80.050 AS 18.80.060 AS 18.80.100

6 AAC 30.220(a) is amended to read:

(a) The executive director may file a complaint on behalf of an individual or a class of persons when acts or practices allegedly contrary to **AS 18.80.220 – AS 18.80.260** [AS 18.80] come to his or her attention. A complaint made by the executive director must contain

(1) an identification of the class which is sufficiently specific to enable the commission's staff to determine the nature of the class through investigation;

(2) a statement of the alleged harm each individual or class has experienced or is experiencing;

(3) the date the alleged discriminatory practice occurred. If the practice is continuing, the complaint must state when the practice began, if known to the executive director. Eff. 12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61; am 5/2/79, Register 70; am 3/12/81, Register 77; am 8/9/84, Register 91; 4/20/2019, Register 230)

Authority: AS 18.80.050 AS 18.80.060 AS 18.80.100

6 AAC 30.230(b) is amended to read:

(b) A complaint **by a person** alleging a discriminatory act or practice not of a continuing nature must be filed no later than [(1)] 300 days after the alleged discriminatory act or practice occurred [, IF THE ACT OR PRACTICE OCCURRED BEFORE 8/22/97; OR

(2) 180 DAYS AFTER THE ALLEGED DISCRIMINATORY ACT OR PRACTICE OCCURRED, IF THE ACT OR PRACTICE OCCURRED ON OR AFTER 8/22/97].

6 AAC 30.230(c) is amended to read:

(c) A complaint **by a person** alleging a discriminatory act or practice of a continuing nature must be filed no later than [(1)] 300 days after the alleged discriminatory act or practice stopped [, FOR AN ALLEGED ACT OR PRACTICE THAT STOPPED BEFORE 8/22/97; OR

(2) 180 DAYS AFTER THE ALLEGED ACT OR PRACTICE STOPPED, FOR AN ALLEGED ACT OR PRACTICE THAT STOPPED ON OR AFTER 8/22/97]. (Eff.

Register 230 July, 2019

GOVERNOR'S OFFICE

12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61;
am 5/2/79, Register 70; am 3/12/81, Register 77; am 8/9/84, Register 91; am 8/22/97, Register
143; am 4/20/2019, Register 230)

Authority: AS 18.80.050 AS 18.80.100 AS 18.80.110
AS 18.80.060

6 AAC 30.320 is repealed and readopted to read:

6 AAC 30.320. Investigation methods by commission staff before conciliation. (a)

The commission's staff will determine the nature and scope of the investigation. The commission's staff will impartially obtain and analyze facts relevant to the complaint and determine if the allegations are supported by substantial evidence. During the investigation, the staff may also investigate matters that are like, related to, or growing out of the complaint. The commission's staff may obtain evidence by resolution conference, interview, inspection of documents and premises, or examination of written submissions of parties and witnesses. Any party or witness may offer a relevant statement or evidence for consideration by the commission's staff.

(b) The commission's staff will conduct interviews confidentially. Witnesses may not be accompanied during interviews unless

(1) by a representative of the respondent if the witness is a member of the respondent's control group;

(2) by an attorney who has entered an appearance before the commission on behalf of the witness;

(3) by a qualified, neutral language interpreter selected by the commission's staff if the commission's staff determines that the interpreter's presence will facilitate communication between the witness and the interviewer;

(4) by a parent of a witness who is a minor;

(5) by a guardian of the witness if the witness lacks capacity to testify independently; or

(6) by another person identified by the witness when such participation would constitute a reasonable accommodation for the witness's disability.

(c) To carry out its impartial investigation, the commission's staff may issue requests for production, interrogatories, subpoenas, and subpoenas duces tecum. A party must mail the answers to interrogatories and responses to requests for production not later than 30 days after service unless the commission's staff grants an extension or modification for good cause shown. The commission's staff may set reasonable times for appearances in response to subpoenas and subpoenas duces tecum. In addition, the following rules apply:

(1) the commission's staff shall notify the party to whom interrogatories, subpoenas duces tecum, or requests for production are directed that failure to answer, appear, or produce may result in an adverse determination by the staff on the merits of the complaint and a loss of the right to offer evidence sought by the interrogatories, subpoenas duces tecum, or requests for production at a later hearing on the complaint;

(2) if a complainant fails to answer, appear, or produce information necessary to reach a determination on the merits of the complaint, the commission's staff shall close the case;

(3) if a respondent fails to answer, appear, or produce, the commission's staff shall analyze the available evidence and determine whether the complaint is supported by substantial evidence; the staff may seek enforcement of a subpoena or subpoena duces tecum in superior court or it may base a determination on inferences drawn from the failure to answer an interrogatory, appear, or produce documents, and proceed as follows:

(A) if the complaint is supported by substantial evidence, the commission's staff shall issue its determination in writing and try to conciliate the complaint; if conciliation fails and a hearing is convened, the hearing commissioners will not receive any evidence that should have been offered in response to the interrogatories, subpoenas duces tecum, or requests for production issued by the commission's staff;

(B) if the complaint is not supported by substantial evidence, the commission's staff may refer the refusal to comply with a subpoena, subpoena duces tecum, request for production, interrogatories, or other process to the Department of Law for appropriate enforcement action in superior court; if the state is a respondent, the commission may employ temporary legal counsel to enforce its investigation process.

(d) No party may serve interrogatories, requests for production, subpoenas, subpoenas duces tecum, and other process on another party, on the commission's staff, or on any other person before certification of conciliation failure by the executive director. The commission's staff may issue process on any person at the request of a party if the staff determines that the

process is reasonably necessary for an impartial investigation, determination, or conciliation of the case.

(e) The commission's staff may issue subpoenas and subpoenas duces tecum to take the deposition of any person as part of its impartial investigation. A deposition taken during an investigation may be offered in evidence at a hearing convened under 6 AAC 30.410 - 6 AAC 30.497 if the party taking the deposition informs the parties to the investigation and the person whose deposition is taken of its intended use. (Eff. 12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61; am 8/16/78, Register 67; am 5/2/79, Register 70; am 3/12/81, Register 77; am 8/9/84, Register 91; am 3/31/90, Register 113; am 7/3/96, Register 138; am 12/14/2007, Register 184, am 4/20/2019, Register 230)

Authority:	AS 18.80.050	AS 18.80.075	AS 18.80.120
	AS 18.80.060	AS 18.80.110	AS 18.80.130

6 AAC 30.330 is repealed and readopted to read:

6 AAC 30.330. Determinations. (a) If the commission's staff determines that a complaint is not supported by substantial evidence, it shall prepare written findings and a determination on each alleged violation of AS 18.80.

(b) If the commission's staff determines that an administrative closure of a case is necessary prior to a conciliation failure, it shall prepare a closing order with a written explanation of the reasons for dismissal.

(c) If the commission's staff determines that the complaint is supported by substantial evidence, it shall prepare written findings and a determination on each alleged violation of AS 18.80. If the commission's staff identifies during the investigation an issue of discrimination or a person not named in the complaint who has been similarly discriminated against, the commission's staff shall identify this issue or person in the determination either by name or with enough specificity that the respondent can identify the issue or the person.

(d) Written findings, determinations, and closing orders shall be delivered to the parties in person, by certified mail, return receipt requested, or through secure electronic transmission.

(Eff. 12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61; am 5/2/79, Register 70; am 3/12/81, Register 77; am 8/9/84, Register 91; am 1/2/2004, Register 168; am 4/20/2019, Register 230).

Authority: AS 18.80.050 AS 18.80.100 AS 18.80.110
AS 18.80.060

6 AAC 30.340 is repealed and readopted to read:

6 AAC 30.340. Conciliation procedures. (a) The commission's staff will provide the parties with proposed terms of conciliation along with the determination that a complaint is supported by substantial evidence. The commission's staff will propose remedies for each issue and individual identified in the determination.

(b) If the commission's staff negotiates conciliation terms that provide a remedy for a person who is not named in the complaint but identified in the determination, the commission's staff will invite the person identified to accept or reject the remedy.

(c) The commission's staff or either party shall direct to the class identified in the findings the best notice practicable to those class members who can be identified through reasonable effort.

(d) Conciliation by the commission will not prevent an individual who has not filed a complaint from seeking relief outside of the conciliation agreement.

(e) If the complainant, executive director, and respondent agree to a remedy or remedies, the agreement must be signed by all parties in accordance with AS 18.80.110. If the complainant refuses to accept conciliation terms offered by the respondent that the executive director believes are reasonable, the executive director may seek to remedy the discriminatory practice or practices identified in the determination without the complainant's participation, and any agreement reached must be signed by the executive director and the respondent.

(f) Conciliation terms must be agreed to not later than 30 days after service of the conciliation agreement proposed by the commission's staff. The executive director may grant an extension of time to agree to the terms of conciliation for good cause shown. The executive director will determine that conciliation efforts have failed if

(1) the respondent fails to discuss conciliation in a timely manner with the commission's staff;

(2) the commission's staff and the parties do not resolve the issues alleged in the complaint; or

(3) the respondent fails to fulfill its obligations under the conciliation agreement.

(g) If the executive director determines that conciliation efforts have failed, the executive director shall inform the commission's chairperson in writing and shall, not later than 45 days of the determination of the failure, refer the complaint to the commission for hearing or dismiss without prejudice the complaint in accordance with AS 18.80.112(b); a referral must be accompanied by an accusation as provided in AS 18.80.120 and must be served on the parties in person or by certified mail, return receipt requested; if the executive director dismisses the complaint, the executive director must give notice to the commission and serve the parties in person or by regular mail.

(h) The commission's staff will attempt conciliation on behalf of a class of persons identified through investigation as described in 6 AAC 30.330(b) even if the individual complainant fails to participate in or cooperate with conciliation efforts. Complainant's refusal to cooperate will not prevent a settlement on behalf of the class members or result in a determination that conciliation efforts on behalf of the class are unsuccessful. (Eff. 12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 1/14/77, Register 61; am 5/2/79, Register 70; am 3/12/81, Register 77; am 3/31/90, Register 113; am 12/14/2007, Register 184)

Authority:	AS 18.80.050	AS 18.80.100	AS 18.80.112
	AS 18.80.060	AS 18.80.110	

6 AAC 30.375 is repealed and readopted to read:

6 AAC 30.375. Reconsideration and review. (a) Not later than thirty days after the date of a determination issued pursuant to 6 AAC 30.330(a) or (b), the executive director, on her or his own motion or at the request of a party, may review the determination. The executive director will issue a notice to the parties advising them that the matter has been reopened and will provide both parties with a limited opportunity to submit additional evidence, within a period of time set by the executive director. Following the conclusion of the reconsideration period, the executive director will issue an amended determination or an order affirming the determination.

(b) A closing order shall be a final agency action for the purposes of judicial review.

(c) Review of dismissals under AS 18.80.112(c) is limited to those instances in which the commission, on its own volition, determines review furthers the purposes of AS 18.80. (Eff. 5/3/2007, Register 182; am 4/20/2019, Register 230)

Authority: AS 18.80.050 AS 18.80.112

6 AAC 30 is amended by adding new section to article 6 to read:

600 Accommodations for service animals and alert animals
610

6 AAC 30.610. Accommodations for service animals and alert animals.

(a) A public accommodation shall modify policies, practices, or procedures to permit the use of a service or alert animal by an individual with a disability.

(b) An individual with a disability shall be permitted to be accompanied by a service or alert animal in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.

(c) A public accommodation may not ask about the nature or extent of a person's disability.

(d) A public accommodation may ask, when it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, (1) if the animal is required because of a disability and (2) what work or task the animal performs.

(e) A person with a disability may not be required to produce documentation that an animal has been certified, trained, or licensed as a service animal. A public accommodation may require an individual with a disability accompanied by an alert animal to produce written verification of a licensed health care provider, who has conducted an in-person physical examination of the individual, of the animal's ability to alert to the present impairment of a vital function which is a condition of the individual's disability.

(f) A service or alert animal must behave appropriately in public, must be under the control of its handler and must be harnessed, leashed, or other tethered, unless these devices would interfere with the service or alert animal's work or the individual's disability prevents using these devices. If the devices interfere, then the handler must maintain control of the animal through voice, signal, or other effective means. A public accommodation is not responsible for the care or supervision of a service or alert animal.

(g) A service or alert animal may be excluded or removed from the premises if

(1) the animal is out of control and the animal's handler does not take effective action to control the animal,

(2) the animal is not housebroken,

(3) the animal's behavior poses a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services, or

(4) admitting the animal would fundamentally alter the nature of the goods, services, programs, or activities provided to the public.

(h) If a service or alert animal is excluded or removed, the removing entity must provide the individual with a disability the opportunity to access goods, services, and accommodations without the service animal.

(i) Where the accommodation of an individual with a disability who relies on a service or alert animal may trigger symptoms of another person with a disability whom the public accommodation has a duty to accommodate, a reasonable effort must be made to accommodate both individuals to the extent possible.

(j) A public accommodation may not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service or alert animal.

(k) A service animal handler shall not be required to obtain any certification or registration from any organization purporting to certify service animals, nor shall the animal be required to carry a tag, vest, or other documentation identifying the animal as a service animal.

However, service animal handlers are not exempt from local animal control or public health requirements.

(l) Requirements applicable to service animals in this regulation shall also be applicable to miniature horses. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public accommodation shall consider:

- (1) the type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- (2) whether the handler has sufficient control of the miniature horse;
- (3) whether the miniature horse is housebroken; and
- (4) whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(m) An animal in training to work or perform tasks for an individual with a disability shall enjoy the same protections as a fully trained service animal when accompanied by either an individual with a disability or a trainer and is actively training. The requirements applicable to service animals and their handlers under this section and other federal or state laws are also applicable to service animals in training and their handlers

(n) The requirements applicable to service animals in public accommodations in this section apply to the state and its political subdivisions, and, except as provided in 3 AAC 30.990(b), to owners, lessors, managers, or other persons having the right to sell, lease, or rent real property.

(o) This subsection does not limit the rights or remedies of a qualified employee with a disability who may seek to use an animal to assist him or her in the performance of the essential functions of a job. Employers shall treat a request from a qualified employee as a request for a reasonable accommodation and engage in an interactive process to determine whether or not the accommodation is reasonable.

(p) This subsection does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal fair housing laws.

(q) In this section,

(1) "alert animal" means any animal that alerts a person with a disability to the present impairment of a vital function which is a condition of the individual's disability, and whose ability to alert is verified in writing by a licensed health care provider who has conducted a physical examination of the individual in person; 6 AAC 30.600 applies to alert animals, except that a public accommodation may require an individual with a disability accompanied by an alert animal to produce the written verification;

(2) "control group" means an employee who holds a position of sufficient authority or responsibility so that he or she may be considered to be speaking on behalf of the organization with respect to the matter at issue, and in so doing is able to legally bind the organization;

(3) "health care provider" means a Doctor of Medicine. "M.D.", doctor of osteopathic medicine "D.O.", advanced practice registered nurse, "APRN, or physician assistant "P.A.";

(4) "service animal" means a dog or miniature horse that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability; the work done or tasks performed must be directly related to the individual's disability and may include, ~~but are not limited to,~~ guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks;

(5) "vital function" means a function of the body on which life is directly dependent, such as respiration or circulation of blood. (Eff. 4/20/2019, Register 230)

Authority:	AS 18.80.050	AS 18.80.220	AS 18.80.230
	AS 18.80.240	AS 18.80.255	

6 AAC 30.905 is amended to read:

6 AAC 30.905. Access to investigative files. Records of investigation and information obtained during an investigation or inquiry are confidential and may not be disclosed except in

accordance with AS 18.80.115. **Records of conciliation may not be disclosed in any event.**

Records and information required to be kept confidential by law must be withheld from disclosure. (Eff. 5/22/81, Register 78; am 11/21/82, Register 84; am 12/14/2007, Register 184; am 4/20/2019, Register 230)

Authority: AS 18.80.050 AS 18.80.110 AS 18.80.115

6 AAC 30.990 is repealed and readopted to read:

6 AAC 30.990. Definitions. (a) Unless the context indicates otherwise, in this chapter or in AS 18.80

(1) “chairperson” means the duly elected chairman or chairwoman of the State Commission for Human Rights, or in the absence of the chairperson, the vice-chairperson or other commissioner designated by the remaining members of the commission;

(2) “commission” means the State Commission for Human Rights;

(3) “commissioner” means one of the members of the State Commission for Human Rights;

(4) “discrimination because of marital status or changes in marital status” includes unjustified adverse action taken against a person because that person is single, married, widowed or divorced, or because of that person’s marriage or termination of marriage to another person;

(5) "executive director" includes the designee of the executive director who presents the case in support of the accusation;

(6) "hearing commissioners" means the commissioners designated by the chairperson to conduct a hearing;

(7) "investigative files" means all information acquired during the course of investigation of a complaint but does not include

(A) information whose release is prohibited by federal law or regulation, or state law;

(B) intra-agency memoranda or staff work product;

(C) attorney work product;

(8) "party" or "parties" means the complainant, respondent or executive director;

(9) "place of public accommodation, resort or amusement" includes but is not limited to educational institutions and all places included in the meaning of that term as it appears in AS 18.80.300 (7);

(10) "public" means persons other than the parties, but does not include those government agencies

(A) which are investigating or taking formal action under AS 18.80.200 - AS 18.80.295;

(B) whose stated policy and purpose is to eradicate discrimination in employment; credit and financing practices; places of accommodation; practices by the state or its political subdivisions; or the sale, lease, or rental of real property.

(b) For purposes of AS 18.80.240 , the terms “lease” or “rental” of real property does not apply to the payment of rent for a room in a dwelling unit when the lessor and lessee will be sharing common living areas in the dwelling unit and the lessor actually occupies the dwelling unit as a resident. (Eff. 12/7/63, Register 13; am 11/2/74, Register 52; am 6/6/75, Register 54; am 3/12/81, Register 77; am 5/22/81, Register 78; am 5/19/82, Register 82; am 8/9/84, Register 91; am 4/9/94, Register 130; am 12/14/2007, Register 184; am 4/20/2019, Register 230)

Authority:	AS 18.80.050	AS 18.80.210	AS 18.80.250
	AS 18.80.060	AS 18.80.220	AS 18.80.255
	AS 18.80.110	AS 18.80.230	AS 18.80.260
	AS 18.80.115	AS 18.80.240	AS 18.80.300
	AS 18.80.200		

MEMORANDUM


State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: March 8, 2019

File No.: 2018200887

Tel. No.: 465-3600

From: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Alaska State Commission for Human
Rights: Service and Alert Animals;
6 AAC 30.210-.990

The Department of Law has reviewed the attached regulations of the Alaska State Commission for Human Rights (commission) against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The commission has statutory authority to adopt regulations “relating to discrimination because of physical and mental disability.” The regulations must “furnish guidance concerning the circumstances under which it is necessary to make reasonable accommodation for a physically or mentally disabled person” related to, among other things, public accommodations, AS 18.80.050(b). The regulations were adopted by the Commission after the close of the public comment period.

The regulations concern hearings before the commission, including regulations relating to the filing and processing of a complaint and conciliation procedures.

The regulations also establish requirements and definitions for service and alert animals in public accommodations in the state. Some situations will also be covered by federal law, including the Fair Housing Act (42 U.S.C. 3601 et. seq.), the Individuals with Disabilities Education Act (20 U.S.C. 33), and the Air Carrier Access Act (49 U.S.C. 41705).

Under the regulations, a service animal is defined in 6 AAC 30.610 to mean a dog or miniature horse trained to do work or a task for a person with a disability. A “service animal” differs from an emotional support animal (or a therapy or comfort animal) because a service animal must be either a dog or a miniature horse trained to perform work or tasks for an individual with a disability. These regulations adopt a detailed definition of the meaning of “service animal.” Further, these regulations mirror in most part federal regulations adopted by the United States Department of Justice to implement the Americans with Disabilities Act. The difference is that under the federal regulations, only dogs may be defined as service animals, but

public entities must make reasonable modification in policies to allow miniature horses trained to do work or tasks for persons with disabilities.

Under these regulations, a service animal may be excluded or removed from the premises if it is out of control, not housebroken, or causes a direct threat to the health and safety of another 6 AAC 30.610(g). Further, to determine if a miniature horse can be accommodated, the public accommodation must consider the size of the miniature horse, whether the miniature horse is under the owner's control, whether the facility can accommodate the miniature horse's size, type, and weight, and whether the miniature horse's presence will compromise legitimate safety requirements necessary for safe operation. 6 AAC 30.610(l).

The regulations also recognize use of an "alert animal." Under the regulations, an alert animal is one specially trained to alert a person with a disability to an impairment of a vital function. Unlike a service animal, a public accommodation may request that the animal's handler provide verification by a licensed health care provider that an animal has the ability to alert its owner to a present impairment of a vital function (such as an impending seizure, or the presence of an allergen.)

The difference between emotional support animals and service animals may not always be clear; in our view, these regulations are within the statutory authority granted the commission and reasonably necessary to provide clarity for the commission to implement its statutory responsibility to address discrimination related to a mental or physical disability.

The public notice and the certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Very minor technical edits are shown on the attached copy. On page 15, we removed "not limited to" after "including" because the term includes in Alaska law is construed as though followed by the phrase "not limited to."

SRP:rjc

cc: Marti Buscaglia, Executive Director, Alaska State Commission for Human Rights
Kevin Higgins, Assistant Attorney General, Department of Law

1 **ALASKA STATE COMMISSION FOR HUMAN RIGHTS**
2 **TELEPHONIC COMMISSION MEETING**

3
4 **Alaska State Commission for Human Rights Office**
5 **800 A Street, Suite 204**
6 **Anchorage, AK**

7
8 **February 28, 2019**

9
10 **Draft Minutes**
11

12
13 **PRESENT BY PHONE:**

14 Chairperson Brandon Nakasato
15 Vice Chairperson Christa Bruce
16 Commissioner David Barton
17 Commissioner Michele Christiansen
18 (Online at 11:03 a.m.)
19 Commissioner Kathryn Dodge
20 Commissioner Megan Mackiernan
21 Commissioner Freddie Olin IV

22
23 **ALSO PRESENT:**

24 Marti Buscaglia, Executive Director
25 Sarah Monkton, Chief of Enforcement
26 Kevin Higgins, Assistant Attorney General
27 Shari Ketchum, Commission Secretary

28
29 **CALL TO ORDER**

30 **Chairperson Nakasato called the meeting to order at 11:02 a.m.** Commission
31 Secretary Shari Ketchum called roll and a quorum was established.

32 **Secretary's Note: Commissioner Christiansen joined the meeting by telephone at**
33 **11:03 a.m.**

34 **ADOPTION OF THE AGENDA**

35 **Motion:** To adopt the agenda.

36 **By:** Vice Chairperson Bruce

37 **Second:** Commissioner Olin IV

38 **Passed.**

39 **OLD BUSINESS**

40 Approve Edits to Regulations as Submitted by State of Alaska Department of Law

41 Edited regulations were presented for reapproval with edits by the department of law.

42 Chairperson Nakasato asked for any questions or discussion. Commissioner Mackiernan
43 then called the question. A roll call vote was taken, and it passed unanimously.

44 **ADJOURN**

45 Chairperson Nakasato asked for a motion to adjourn.

44

45 **Motion:** To adjourn.

46 **By:** Commissioner Mackiernan

47 **Second:** Commissioner Barton

48 **Passed.**

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50 Meeting was adjourned at 11:11 a.m.

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54 Shari Ketchum

55 Commission Secretary

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NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Brief description: The proposed changes relate to procedures for investigation, determinations, conciliations, and hearings before Alaska State Commission for Human Rights and propose new regulations to establish categories of service animals and the rules regarding them.

The Alaska State Commission for Human Rights (Commission) proposes to adopt regulation changes in Title 6 of the Alaska Administrative Code including the following:

- (1) 6 AAC 30.210, providing how complaints may be filed, is proposed to be changed to provide for complaints by “persons” rather than “individuals.”
- (2) The proposed changes to 6 AAC 30.220, dealing with complaints filed by the executive director, clarifies that the executive director may file complaints when she learns of a violation of AS 18.80.220 - .260.
- (3) The proposed changes to 6 AAC 30.230, dealing with the complaint filing date, limits the filing deadline to complaints filed by a “person,” consistent with the proposed amendments to 6 AAC 30.210. In addition, it increases the timeline for filing a case to 300 days from the date of harm to be consistent with the EEOC’s statute of limitations.
- (4) 6 AAC 30.320, dealing with investigation methods, is proposed to be changed so that the Commission’s longstanding practice of conducting interviews without the participation of third parties is codified in the regulation.
- (5) 6 AAC 30.330, dealing with determinations, is proposed to be changed by clarifying the procedural steps that Commission staff must take when making a determination of substantial evidence or no substantial evidence, changing the reference to “findings of fact” to simply “findings,” and deleting the reference to a closing order, as the regulatory scheme for closing a case is addressed in the proposed changes to 6 AAC 30.375. In addition, the proposed inclusion of a new subsection (b) provides a regulatory provision for the existing Commission practice of closing a case administratively in certain circumstances.
- (6) 6 AAC 30.340, dealing with conciliation procedures, clarifies that the Commission has the authority to reach a two-party agreement with respondent if complainant does not agree to settle the case.
- (7) 6 AAC 30.375, dealing with finality of staff decisions, is proposed to be changed to give the Executive Director the authority to reopen a case within 30 days of closure in certain circumstances.
- (8) The proposed changes to 6 AAC 30.410, dealing with the beginning of the hearing process, provides that the default location for a hearing will be Anchorage and provides that a party wishing to hold the hearing in another location will need file a motion with the Commission showing good cause.

- (9) 6 AAC 30.905, dealing with access to investigative files, clarifies that the conciliation file is confidential and may not be disclosed.
- (10) 6 AAC 30.915, a proposed new regulatory provision dealing with service animals, would allow for the recognition of animals that alert a person with a disability to the present impairment of a vital function as “service animals,” in addition to dogs and miniature horses. Other provisions of this proposed regulation are adapted from federal regulations and guidance on service animals.
- (11) The proposed changes to 6 AAC 30.990, providing definitions for the regulations of the Alaska State Commission for Human Rights, include clarifying and corrective changes. In addition, the proposed changes include the definition of “control group,” “medical provider” and “impairment of a vital function” relating to the proposed service animal regulation, 6 AAC 30.915.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alaska State Commission for Human Rights at 800 A Street, Suite 204, Anchorage, Alaska 99501, Attn: Marti Buscaglia or via email to marti.buscaglia@alaska.gov. The comments must be received no later than 5:00 p.m. on November 28, 2018.

You may submit written questions relevant to the proposed action to the Alaska State Commission for Human Rights at 800 A Street, Suite 204, Anchorage, Alaska 99501, Attn: Marti Buscaglia or via email to marti.buscaglia@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. ASCHR will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at <https://humanrights.alaska.gov/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Shari Ketchum at 792-7239, no later than November 20, 2018, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Shari Ketchum at 800 A Street, Suite 204, Anchorage, Alaska 99501, call 792-7239, or go to <https://humanrights.alaska.gov/>.

After the public comment period ends, the Commission will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 18.80.050; AS 18.80.060; AS 18.80.075; AS 18.80.100; AS 18.80.110; AS 18.80.112; AS 18.80.115; AS 18.80.120; AS 18.80.135; AS 18.80.220; AS 18.80.230; AS 18.80.240; AS 18.80.255; AS 18.80.260; AS 18.80.300.

Statutes Being Implemented, Interpreted, or Made Specific: AS 18.80.050; AS 18.80.100; AS 18.80.110; AS 18.80.112; AS 18.80.115; AS 18.80.120; AS 18.80.220; AS 18.80.230; AS 18.80.240; AS 18.80.255; AS 18.80.260; AS 18.80.300.

Fiscal Information: The proposed regulation change will not require an increased appropriation.

DATE: October 3, 2018

Marti Buscaglia
Executive Director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska State Commission for Human Rights
2. General subject of regulation: The proposed changes relate to procedures for investigation, determinations, conciliations, and hearings before Alaska State Commission for Human Rights and propose new regulations to establish categories of service animals and the rules regarding them.
3. Citation of regulation (may be grouped): 6 AAC 30.210 –.230; 6 AAC.30.320 –.340; 6 AAC 30.375; 6 AAC 30.410; 6 AAC 30.905; 6 AAC 30.915;
4. Department of Law file number, if any: _____
5. Reason for the proposed action:

☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with federal or state court decision (identify): _____
☒ Development of program standards
☐ Other (identify): _____
6. Appropriation/Allocation: \$0/\$0
7. Estimated annual cost to comply with the proposed action to:

A private person: \$0
Another state agency: \$0
A municipality: \$0
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>19</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/		

program \$ 0 \$ 0
Other (identify) \$ 0 \$ 0

9. The name of the contact person for the regulation:

Name: Marti Buscaglia
Title: Executive Director
Address: 800 A St, Ste. 204, Anchorage, AK 99501
Telephone: 907-792-7241
E-mail address: marti.buscaglia@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change⁷
☐ Other (identify): _____

11. Date: October 4, 2018

Prepared by: _____

[signature]

Name (printed): Marti Buscaglia
Title (printed): Executive Director
Telephone: 907-792-7241

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270246

ST OF AK/COMM HUMAN RIGHTS
800 A STREET STE 204
ANCHORAGE, AK 995013869

Order#
Cost

0001428888
\$617.52

Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Sarah Jennett:

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

October 08, 2018

and that such newspaper was regularly distributed to its subscribers during all of said period, That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed _____
Sarah Jennett

Subscribed and sworn to before me
this 8th day of October, 2018

Britney L. Thompson
Notary Public in and for
The State of Alaska,
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

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Fiscal Information: The proposed regulation change will not require an increased appropriation.

DATE: October 3, 2018

Marti Buscaglia
Executive Director

Published: October 8, 2018

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Marti Buscaglia, Executive Director, of Alaska State Commission for Human Rights, being sworn, state the following:

- (1) As required by AS 44.62.190, notice of the proposed adoption of changes to 6 AAC 30.210, providing how complaints may be filed.
- (2) 6 AAC 30.220, dealing with complaints filed by the executive director.
- (3) 6 AAC 30.230, increases the timeline for filing a case to 300 days from the date of harm.
- (4) 6 AAC 30.320, dealing with investigation methods, codifies the practice of conducting interviews without the participation of third parties.
- (5) 6 AAC 30.330, dealing with determinations.
- (6) 6 AAC 30.340, dealing with conciliation procedures.
- (7) 6 AAC 30.375, dealing with finality of staff decisions.
- (8) 6 AAC 30.410, provides that the default location for a hearing will be Anchorage.
- (9) 6 AAC 30.905, dealing with access to investigative files, clarifies that the conciliation file is confidential and may not be disclosed.
- (10) 6 AAC 30.915, adding a proposed new regulatory provision dealing with service animals
- (11) 6 AAC 30.990, providing definitions for the regulations

has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4), and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: November 27, 2018


Marti Buscaglia, Executive Director

Subscribed and sworn to before me at Anchorage, Alaska on
November 27, 2018.



Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Marti Buscaglia, Executive Director for the Alaska State Commission for Human Rights, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alaska State Commission for Human Rights has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska State Commission for Human Rights regulation on procedures for investigations, determinations, conciliations, and hearings before the Human Rights Commission, including adding a proposed new regulatory provision dealing with service animals.

Date: December 14, 2018



Marti Buscaglia, Executive Director

Subscribed and sworn to before me at Anchorage, Alaska on
December 14, 2018
(date)



Notary Public in and for the State of Alaska

[NOTARY SEAL]

