

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 434

SPONSOR: Governmental Oversight and Productivity Committee, Senator Wise and others

SUBJECT: Disabilities/Service Animals

DATE: February 23, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 413.08, F.S., which regulates access to facilities and public accommodations by persons with disabilities who use dog guides or service dogs. The bill expands the type of animals that are included under the section by eliminating “dog guide” and “service dog” and substituting the broader Federal definition of “service animals” instead. Further, the bill creates definitions that are based on the Federal definitions for the terms: “direct threat,” “housing accommodation,” “individual with a disability,” “major life activities,” “mental impairment,” “physical impairment,” “place of public accommodation,” and “substantially limits.” The bill increases the penalty for discriminating against an individual with a disability when providing housing accommodations to a first degree misdemeanor after the first offense. Finally, the bill makes conforming changes to s. 413.081, F.S., relating to the interference with or injury to a service animal.

This bill substantially amends sections 413.08 and 413.081 of the Florida Statutes.

II. Present Situation:

Service animals have been used since the 1960’s to provide greater independence for individuals with disabilities.¹ Beginning in the 1970’s, service animals were trained to provide specialized services to individuals with disabilities. These specialized services include “operating light switches, retrieving items, pulling wheelchairs, and opening doors.” Dogs may also assist individuals with a hearing impairment by alerting them to intruders or various sounds. With the

¹ See Henderson, Kelly. *No Dogs Allowed? Federal Policies on Access for Service Animals*, Animal Welfare Information Center Newsletter, Summer 1996, Vol. 7 No. 2. U.S. Dept. Of Agriculture, National Agricultural Library, <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm>.

increase in the use of service animals, federal legislation was passed in the 1980's to provide public access for individuals accompanied by service animals.

The Air Carrier Access Act of 1986 and federal regulations permit dogs and other service animals to accompany an individual with a disability on a flight. Subsequently, the Fair Housing Act of 1988 defined discrimination, in part, as "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." Later, the Americans with Disabilities Act (ADA) would provide national access rights for service animals. The ADA defines the term "service animal" as "any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability."

The Equal Employment Opportunity Commission and the Civil Rights Division of the U.S. Department of Justice both have authority to take action in response to a complaint filed under the act. Both agencies provide technical assistance manuals to clarify the provisions of the U.S. Code and Federal Register that govern animal service policies. Under the ADA, businesses and organizations that serve the public must provide access to individuals with disabilities and their service animals in any area open to customers. The proprietor of a business may inquire as to whether the animal is a service animal and may ask what tasks the animal has been trained to perform.² However, the proprietor may not ask for identification as proof of training for the service animal and cannot ask about the person's disability.³

Federal law provides that an individual with disability may not be charged extra fees, isolated from other patrons, or treated less favorably than other patrons.⁴ A proprietor may not require a deposit or impose a surcharge on an individual with a disability as a condition of allowing the service animal on the premises, even if such deposit or surcharge is routinely required for pets.⁵ However, if the business would normally charge guests for any damage they cause, the individual with a service animal may be charged for any damage caused by the animal.⁶ The proprietor may not ask the individual to remove the service animal unless the animal is out of control and its owner does not take effective action or the animal poses a direct threat to the health or safety of others. Allergies or the fear of animals are not valid reasons for denying access to an individual with a service animal. The proprietor is not required to provide food or a special location for the service animal.⁷

Currently, all 50 states have legislation addressing the issue of service dogs.⁸ If state legislation provides less protection to an individual accompanied by a service animal than is afforded the individual under federal law, the federal law takes precedence over state laws or regulations. The issue of access for service animals is preempted by federal legislation.⁹ Section 413.08, F.S.,

² See U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions About Service Animals in Places of Business*, <http://www.usdoj.gov/crt/ada/qasrvc.htm>.

³ See *id.*

⁴ 28 C.F.R. 36.104 (2003).

⁵ See *supra* note 2.

⁶ See *supra* note 2. See also U.S. Department of Justice, Civil Rights Division, *ADA Business Brief: Service Animals*, <http://www.usdoj.gov/crt/ada/svcanimb.htm>.

⁷ See *supra* note 6.

⁸ See *supra* note 1.

⁹ See *supra* note 2.

refers to "guides" rather than "service animals." It lacks a definition for the terms "individual with disability," "place of public accommodation," and "service animal." Also, it does not specify what questions a proprietor may ask an individual that is accompanied by a service animal.

III. Effect of Proposed Changes:

Section 1 amends s. 413.08, F.S., which outlines rights of physically disabled persons, the use of guide or service dogs and discrimination in public employment or housing accommodations, to meet the Federal standard. The bill provides definitions for the following:

- "Direct threat" means a determination that the person poses a significant risk to the health and safety of others which cannot be eliminated or reduced to an acceptable level. A direct threat cannot be based on generalizations or stereotypes about the effects of a particular disability; it must be based on an individual assessment that considers the particular activity and the actual abilities and disabilities of the individual. The assessment of a direct threat must be based on reasonable judgment that relies on current medical evidence, or on the best available objective evidence, to determine the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.
- "Housing accommodation" is defined to mean any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as a home, residence, or sleeping place of one or more human beings. The term does not include a single-family residence if the occupants rent or lease not more than one room in the residence to others for compensation.
- "Individual with a disability" means a person with a physical or mental impairment that substantially limits the person's ability to perform one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Specific items are excluded from the definition.
- "Major life activities" means activities that an average person can perform with little or no difficulty, including, but not limited to, walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, working, standing, lifting, and reading.
- "Mental impairment" means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- "Physical impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; sensory organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.
- "Service animal" means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a

- seizure, retrieving objects, or performing other special tasks. A service animal is not a pet.
- “Substantially limits” means renders the individual unable to perform an activity compared to an average person in the general population. Factors to consider in determining whether an impairment substantially limits a major life activity include the nature and severity of the impairment, how long it will last or is expected to last, and its permanent or long-term impact or expected impact.
 - “Place of public accommodation” means a facility operated by a private person, whose operations affect commerce and fall within at least one of the following categories:
 - An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor.
 - A restaurant, bar, or other establishment serving food or drink.
 - A motion picture house, theater, concert hall, stadium, or other place of gathering.
 - An auditorium, convention center, lecture hall, or other place of exhibition or entertainment.
 - A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.
 - A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of a health care provider, hospital, or other service establishment.
 - A terminal, depot, or other station used for specified public transportation.
 - A museum, library, gallery, or other place of public display or collection.
 - A park, zoo, amusement park, or other place of recreation.
 - A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social services establishment.
 - A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

In addition, the bill provides that an individual with a disability is entitled to full and equal access in all state and local government facilities, programs, services, and activities.

As provided in Federal law, the bill prohibits requiring documentation that a service animal is trained as a precondition for providing service to an individual accompanied by a service animal; however, a proprietor is authorized to ask if the animal is a service animal or what tasks the animal has been trained to perform in order to distinguish a service animal from a pet. An individual with a service animal may not be segregated from other customers or the public.

A proprietor may not charge a deposit or surcharge as a condition of providing access to an individual accompanied by a service animal. However, if it is the regular policy of the proprietor to charge a nondisabled person for damage caused by their pet, the individual with a disability must also pay for any damage caused by their service animal.

The provision allows a proprietor or government employee to exclude or remove a service animal from the premises if the animal's behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not permissible bases for exclusion under the bill.

In addition, the bill amends subsection (5), which is renumbered as subsection (13), with an increase in the penalty for discriminating against an individual with a disability when providing housing accommodations. For the first offense, the penalty remains a second degree misdemeanor but subsequent offenses are raised to a first degree misdemeanor.

Section 2 amends s. 413.081, F.S., relating to interference with or injury to a guide dog, to make conforming changes with the provisions of section 1 of this bill. Those changes include defining the term "service animal."

Section 3 provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under current state law, any person, firm, or corporation, or their agents, who denies or interferes with admittance to, or enjoyment of, the public facilities enumerated in the section, or otherwise interferes with the rights of persons protected under it, commits a misdemeanor of the second degree. The bill retains the initial violation as a second degree misdemeanor, but provides that subsequent violations are misdemeanors of the first degree.

Under s. 921.001(9) (b), F.S., on or after January 1, 1994, any legislation which:

- Creates a felony offense;
- Enhances a misdemeanor offense to a felony offense;
- Moves a felony offense from a lesser offense severity level to a higher offense severity level in the offense severity ranking chart in s. 921.0012; or
- Reclassifies an existing felony offense to a greater felony classification

must provide that such change result in a net zero sum impact in the overall prison population, as determined by the Criminal Justice Estimating Conference, unless the legislation contains a funding source sufficient in its base or rate to accommodate such change or a provision which specifically abrogates the application of this paragraph.

While the bill raises subsequent violations from misdemeanors of the second degree to misdemeanors of the first degree, it does not raise the violation to a felony, so the provisions of s. 921.001(9) (b), F.S., do not apply.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current Florida law is restricted to “*every deaf or hard of hearing person, totally or partially blind person, person who is subject to epilepsy or other such seizure disorders, or physically disabled person.*”

The ADA has a three-part definition of "disability." Under the ADA, an individual with a disability is a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such an impairment; or
3. is regarded as having such an impairment.

Federal law specifically defines the phrase “physical or mental impairment” to include specific impairments and to exclude others. For example, 28.C.F.R 36.104 provides, in part:

- (1) The phrase physical or mental impairment means –
 - (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
 - (ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

- (iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. . . .
- (2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. . . .

Also, specifically excluded from the definition of disability are: "Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs as defined in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. 812.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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