

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 849 Service Animals

**SPONSOR(S):** State Affairs Committee; Judiciary Committee; Government Operations Subcommittee; Smith and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 0 N, As CS	Stramski	Williamson
2) Judiciary Committee	18 Y, 0 N, As CS	Jones	Havlicak
3) State Affairs Committee	13 Y, 0 N, As CS	Stramski	Camechis

### SUMMARY ANALYSIS

Under Florida law, an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, public employment, and housing. Such an individual may be accompanied by a trained service animal in all areas of public accommodation that the public is normally permitted to occupy. Any person who denies or interferes with the right of a disabled individual or animal trainer to use a place of public accommodation commits a second degree misdemeanor.

The bill revises the definition of "individual with a disability" to add a person with a physical or mental impairment that substantially limits one or more major life activities. A "major life activity" is defined as a function such as caring for oneself, performing manual tasks, walking, hearing, and speaking, among others. A "physical or mental impairment" is defined, in part, as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The bill specifically includes a timeshare that is a transient public lodging in the definition of a public accommodation.

The bill requires a public accommodation to modify its policies to permit use of a service animal by a person with a disability. However, the bill clarifies that the term "service animal" as applied to an air carrier covered by the federal Air Carrier Access Act has the same meaning as provided in that act and rules promulgated to implement it. The bill specifies that a public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform. The bill requires a service animal to be kept under the control of its handler. It authorizes a public accommodation to remove the animal if it is not under the handler's control, the animal is not housebroken, or the animal's behavior poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or animal trainer to use a place of public accommodation is modified to require a person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity at the discretion of the court.

Finally, the bill provides that knowingly and willfully misrepresenting oneself to be qualified to use a service animal or to be a trainer of a service animal is a second degree misdemeanor. It also requires such person to perform 30 hours of community service.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Americans with Disabilities Act<sup>1</sup>

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities<sup>2</sup> in employment,<sup>3</sup> the provision of public services,<sup>4</sup> and in public accommodations.<sup>5</sup> This prohibition requires entities covered by the law to provide reasonable accommodations to disabled persons. One such accommodation provides that a disabled person is entitled to be accompanied by a service animal<sup>6</sup> in all areas of a public accommodation or a public entity that is otherwise open to the public.<sup>7</sup> A public accommodation or a public entity may not ask about the nature of a person's disability, but may ask if an animal is required because of a disability, and may ask what tasks the animal has been trained to perform. A public accommodation or a public entity may remove a service animal if it is out of control and the animal's handler does not take immediate action to remove it, or if the animal is not housebroken.<sup>8</sup>

##### Air Carrier Access Act<sup>9</sup> and the Airline Deregulation Act<sup>10</sup>

The federal Air Carrier Access Act provides that no air carrier may discriminate in providing air transportation against an otherwise qualified individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or who is regarded as having such an impairment.<sup>11</sup> Federal law further provides that generally a state may not enact or enforce a law related to a price, route, or service of an air carrier covered under applicable law.<sup>12</sup>

Federal regulations promulgated by the United States Department of Transportation provide for the use of service and emotional support animals on air carriers.<sup>13</sup>

##### Federal Fair Housing Act<sup>14</sup>

The federal Fair Housing Act (FHA) prohibits any person from discriminating in the sale or rental of a dwelling based on a handicap.<sup>15, 16</sup> Failure to provide a reasonable accommodation, including permitting use of service animals, to a disabled person may constitute a violation of the prohibition on discrimination based on a handicap.<sup>17</sup> Accommodation of untrained emotional support animals may

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<sup>1</sup> 42 U.S.C. s. 12101, *et seq.*

<sup>2</sup> Under the ADA, a disability means a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).

<sup>3</sup> 42 U.S.C. s. 12112.

<sup>4</sup> 42 U.S.C. s. 12132.

<sup>5</sup> 42 U.S.C. s. 12182.

<sup>6</sup> A "service animal" is defined in part 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[...]. The work or tasks performed by a service animal must be directly related to the individual's disability... [T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."

<sup>7</sup> 28 C.F.R. ss. 36.302(c)(7) and 35.136(g).

<sup>8</sup> *Id.*

<sup>9</sup> 49 U.S.C. s. 41705.

<sup>10</sup> Pub. L. 95-504.

<sup>11</sup> 49 U.S.C. s. 41705.

<sup>12</sup> 49 U.S.C. s. 41713.

<sup>13</sup> 14 C.F.R. s. 382.117.

<sup>14</sup> 42 U.S.C. s. 3601.

<sup>15</sup> The definition of "handicap" under the Fair Housing Act mirrors the definition of "disability" under the ADA. 42 U.S.C. s. 3602(h).

*See supra*, fn 2.

<sup>16</sup> 42 U.S.C. s. 3604(f).

<sup>17</sup> *See* 28 C.F.R. ss. 35.136 and 36.302.

also be required under the FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.<sup>18</sup>

### Florida Service Animal Law

Florida law provides that an individual with a disability<sup>19</sup> is entitled to equal privileges of access in public accommodations,<sup>20</sup> public employment,<sup>21</sup> and housing accommodations.<sup>22</sup> An individual with a disability has the right to be accompanied by a trained service animal<sup>23</sup> in all areas of public accommodations that the public is normally allowed to occupy.<sup>24</sup> A trainer of a service animal, while engaged in the training of the animal, has the same rights of access and obligations of liability for damage as an individual with a disability who is accompanied by a service animal.<sup>25</sup> Public accommodations are not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.<sup>26</sup>

Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal, though a public accommodation may ask if an animal is a service animal and what tasks it is trained to perform in order to determine if an animal is a service animal or a pet.<sup>27</sup> A public accommodation may remove a service animal if the animal poses a direct threat to the health and safety of others. Allergies and fear of animals are not sufficient for removal.<sup>28</sup> While no deposit may be required of a disabled individual as a precondition of allowing that person to be accompanied by a service animal, the individual is responsible for the care of the animal and for damage caused by the animal.<sup>29</sup> If a service animal is removed by the public accommodation, it must provide the disabled individual the option of continuing access to the public accommodation without having the service animal on the premises.<sup>30</sup>

Any person who denies or interferes with the rights of access to public accommodations, or otherwise interferes with the rights, of a person with a disability or a trainer of a service animal while engaged in the training of such an animal, commits a second degree misdemeanor,<sup>31</sup> punishable by imprisonment of up to 60 days or a fine not to exceed \$500.<sup>32</sup>

It is the policy of the state that individuals with a disability be employed by the state or its subdivisions, or in other employment funded in whole or in part by public funds. An individual with a disability may not be refused employment on the basis of disability alone, unless it is shown that the particular disability

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<sup>18</sup> *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because “plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation...”)

<sup>19</sup> An “individual with a disability” means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise has a physical impairment that substantially limits one or more major life activities. Section 413.08(1)(b), F.S.

<sup>20</sup> Section 413.08(2), F.S. “Public accommodation” means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited. Section 413.08(1)(c), F.S.

<sup>21</sup> Section 413.08(5), F.S.

<sup>22</sup> Section 413.08(6), F.S. “Housing accommodation” means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein. Section 413.08(1)(a), F.S.

<sup>23</sup> “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. Section 413.08(1)(d), F.S.

<sup>24</sup> Section 413.08(3), F.S.

<sup>25</sup> Section 413.08(8), F.S.

<sup>26</sup> Section 413.08(2), F.S.

<sup>27</sup> Section 413.08(3)(a), F.S.

<sup>28</sup> Section 413.08(3)(e), F.S.

<sup>29</sup> Section 413.08(b) and (c), F.S.

<sup>30</sup> Section 413.08(3) (e), F.S.

<sup>31</sup> Section 413.08(4), F.S.

<sup>32</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

prevents the performance of the work involved.<sup>33</sup> A covered employer who discriminates in employment against a person with a disability commits a second degree misdemeanor, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.<sup>34</sup>

An individual with a disability is entitled to rent, lease, or purchase any housing accommodations subject to the same conditions that are applicable to all persons.<sup>35</sup> An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for such animal. Such a person is liable for any harm to the premises or another person on the premises caused by the animal.<sup>36</sup>

## Effect of the Bill

The bill revises the definition of “individual with a disability” to add a person with a physical or mental impairment that substantially limits one or more major life activities. A “physical or mental impairment” is defined in part as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. A “major life activity” is defined as a function such as caring for oneself, performing manual tasks, walking, hearing, and speaking, among others.

The bill specifically includes a timeshare that is a transient public lodging establishment as defined in s. 509.013, F.S.,<sup>37</sup> in the definition of “public accommodation.”

The bill expands the definition of “service animal” to add animals trained to work or perform tasks to assist with psychiatric, intellectual, or other mental disabilities. The work or tasks performed for the purpose of the definition must be directly related to the disability,<sup>38</sup> and do not include any crime-deterrent effect due to an animal’s presence or the provision of emotional support, well-being, comfort, or companionship. The bill specifies that for subsections (2), (3), and (4) of s. 413.08, F.S., a service animal is limited to a dog or miniature horse. However, the bill clarifies that the term “service animal” as applied to an air carrier covered by the federal Air Carrier Access Act<sup>39</sup> has the same meaning as provided in that act and rules promulgated to implement it.<sup>40</sup>

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal<sup>41</sup> by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler. Specifically, the service animal must have a harness, leash, or other tether. The service animal must be under the handler's control by means of voice control, signals, or other effective means if the handler is unable to use a harness, leash, or other tether, because of a disability or the use of such would interfere with the service animal's safe, effective performance of work or tasks.

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<sup>33</sup> Section 413.08(5), F.S.

<sup>34</sup> Section 413.08(7), F.S.

<sup>35</sup> Section 413.08(6), F.S.

<sup>36</sup> Section 413.08(6)(b), F.S.

<sup>37</sup> “Transient public lodging establishment” is defined as any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Section 509.013(4)(a)1., F.S.

<sup>38</sup> The bill lists the work or tasks a service animal that may perform but are not limited to: and may include, but are not limited to, guiding an individual a person who is visually impaired or blind, alerting an individual a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual a person 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.

<sup>39</sup> 49 U.S.C. s. 41705.

<sup>40</sup> Federal regulations provide that identification cards, written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal may all demonstrate that an animal is a service animal. 14 C.F.R. s. 382.117(d).

<sup>41</sup> For this paragraph a service animal is limited to a dog or miniature horse.

A public accommodation may remove the animal<sup>42</sup> if it is not under the handler's control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill modifies current criminal penalty provisions applicable to any person who interferes with the admittance to or enjoyment of a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal<sup>43</sup> while engaged in the training of an animal. It requires the person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court, to be completed in not more than six months.

The bill clarifies that s. 413.08, F.S., which provides that an individual with a disability is entitled to access to housing accommodations on the same conditions applicable to all persons, does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

Finally, the bill provides that it is a second degree misdemeanor for a person to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal, punishable by imprisonment of up to 60 days or a fine not to exceed \$500.<sup>44</sup> In addition, such a person must perform 30 hours of community service for an organization that serves individuals with disabilities or another entity, at the discretion of the court, to be performed in not more than six months.

#### B. SECTION DIRECTORY:

Section 1 amends s. 413.08, F.S., providing and revising definitions, requiring a public accommodation to permit use of a service animal by an individual with a disability under certain conditions, providing conditions for a public accommodation to exclude or remove a service animal, revising penalties to include community service for certain persons or entities who interfere with use of a service animal in specified circumstances, providing conditions under which a public accommodation may request documentation of a qualifying disability, providing a penalty for a knowing and willful misrepresentation with respect to use or training of a service animal.

Section 2 provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Sections 775.082(4)(b) and 775.083(1)(e), F.S.

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Government Operations Subcommittee adopted an amendment to HB 849 and reported the bill favorably with committee substitute. The amendment provides that it is a misdemeanor to knowingly and willfully, as opposed to knowingly and fraudulently, misrepresent oneself as using a service animal and being qualified to use a service animal, or as being a trainer of a service animal.

On March 27, 2014, the Judiciary Committee adopted three amendments and reported the bill favorable as a committee substitute. The amendments:

- Required that the community service hours must be completed within six months;
- Replaced the terms landlord and tenant to housing accommodation and individual with a disability;
- Clarified that an emotional support animal provides emotional support to an individual with a disability who has a disability-related need for such support *and* alleviates one or more symptom or effects of the disability; and
- Clarified that for the purposes of subsections (2), (3), and (4), of s. 413.08, F.S., a service animal is limited to a dog or miniature horse.

On April 11, 2014, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that the definition of "public accommodation" includes a timeshare that is a transient public lodging establishment as defined in s. 509.013, F.S.;
- Removed all references to emotional support animals;
- Removed a provision permitting a housing accommodation to request medical documentation of a qualifying disability that benefits from the use of a service animal or emotional support animal, except in

cases where the disability and the need for a service animal or emotional support animal are readily apparent; and

- Clarified that s. 413.08(6), F.S., which addresses a disabled individual's entitlement to equal access to housing, does not limit the rights or remedies of a housing accommodation or an individual with a disability provided by state or federal law with regard to other assistance animals.

This analysis is drafted to the committee substitute as adopted by the State Affairs Committee.