

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.)

BILL: CS/SB 2210

SPONSOR: Criminal Justice Committee and Senator Saunders

SUBJECT: Guide Dogs and Service Animals

DATE: March 5, 2002

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>APJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill creates new criminal offenses related to interference with, or the injury or death of guide dogs or service animals, through either culpable negligence or an intentional act.

The bill provides that a person, or a dog owned by that person or under the immediate control of that person, who interferes with the use of a guide dog or service animal by obstructing, intimidating, or jeopardizing the animal's safety or its user's safety commits a second degree misdemeanor. For a subsequent violation, the crime is punishable as a first degree misdemeanor. Likewise, if the guide dog or service animal is injured or killed, under the circumstances outlined above, the offense is a first degree misdemeanor.

If a person commits an intentional act, or permits a dog owned by them or in their immediate control to commit an act which injures or kills a guide dog or service animal, the offense is punishable as a third degree felony.

The bill requires full restitution for all resulting damages.

The bill also extends certain rights related to service animals already enjoyed by other people with disabilities to those who have seizure disorders.

This bill creates a new section of the Florida Statutes and amends section 413.08, F.S.

II. Present Situation:

Guide Dogs and Service Animals

Section 413.08, F.S., recognizes the right of physically disabled persons to be accompanied by a dog guide, service dog, or service animal on all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and other public conveyances, and at hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited. s. 413.08(1)(a), F.S. Section 413.08(1)(c), F.S., specifies that a person with paraplegia or quadriplegia “shall have the right to be accompanied by a nonhuman primate of the genus *Cebus*, specially trained for the purpose of providing personal care services” (generally a Capuchin monkey) in any of the places previously listed.

The dog guide or service dog must be capable of being identified as being from a “recognized school for seeing-eye, hearing-ear, service, or guide dogs.” s. 413.08(1)(b), F.S.

The statute also provides that it is a second degree misdemeanor for any “person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, the public facilities enumerated in subsection (1) or otherwise interferes with the rights of a deaf person, hard of hearing person, a totally or partially blind person, or an otherwise physically disabled person under this section, or the trainer of a dog guide or service dog while engaged in the training of such dog...”. s. 413.08(2), F.S.

Section 212.08(7)(h), F.S., provides an exemption from sales or rental tax for a guide dog for the blind, and the sale of food or other items for the dog.

Florida State Parks do not charge an overnight stay fee for service animals, but pets fees for all other animals are \$2 per night.

Section 767.16, F.S., specifically exempts service dogs for the blind, hearing impaired, or disabled, that bite another animal or human from any quarantine requirement following a biting incident so long as the rabies vaccination is current.

Criminal and Civil Liability for Acts of Animals or Acts Against Animals

It is a third degree felony, under s. 843.19(2), F.S., for a person to knowingly and willingly inflict bodily harm, permanent disability or death upon a police dog, fire dog, search and rescue dog or police horse.

Under s. 828.125, F.S., it is a second degree felony to kill, maim, mutilate, or cause great bodily harm or breeding disability to registered horses or cattle. The same penalty applies in cases where there is a conspiracy, attempt, or solicitation to do the act against registered horses or cattle. It is third degree felony to threaten, verbally or in writing, to do the enumerated acts, where the person has the apparent ability to do the acts and places the owner in fear that the act is about to take place.

A review of Florida case law reveals a number of cases where a defendant was convicted of a criminal law violation wherein the instrumentality of the crime was a dog under his or her control. (see *Morris v. State*, 722 So.2d 849 (1st DCA 1998), aggravated battery on a law

enforcement officer; *State v. Kirby*, 752 So.2d 36 (5th DCA), assault on a law enforcement officer; and *Gonzales v. State*, 691 So.2d 602 (4th DCA 1997), aggravated assault on a law enforcement officer.)

Local ordinances, at the county and municipal level, prohibit animals from running at large, which is generally defined as off their owners' property without being under some sort of control, ranging from voice control to leash control. Violations of the animals at large ordinances result in civil monetary penalties. Many local governments have adopted ordinances governing the designation of and keeping of dangerous dogs, which is also addressed in ss. 767.10 – 767.15, F.S.

Dog owners are liable for damage done by their dogs to any person or domestic animal or livestock. s. 767.01, F.S., s. 767.04, F.S. Livestock owners are liable for any damage done by their livestock if it is permitted to run at large. s. 588.15, F.S.

Culpable Negligence

Culpable negligence has been defined as “reckless indifference or grossly careless disregard of the safety of others.” *State v. Greene*, 348 So.2d 3 (Fla. 1977).

Chapter 784, F.S., provides for punishment of simple culpable negligence as a second degree misdemeanor where a person “exposes another person to personal injury” through culpable negligence. It is a first degree misdemeanor when actual personal injury is inflicted as a result of culpable negligence. s. 784.05(1) and (2), F.S.

Culpable negligence is explained to juries by Florida judges based on the Florida Standard Jury Instructions in Criminal Cases, as follows:

I will now define ‘culpable negligence’ for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. *Fla. Std. Jury Instr. (Crim.)*

Restitution

Section 775.089, F.S., provides that in addition to any other criminal penalties, the court shall order the defendant to make restitution to the victim for:

1. Damage or loss caused directly or indirectly by the defendant's offense; and
2. Damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to do so. s. 775.089(1)(a), F.S.

The term “victim,” for purposes of the restitution statute, means a person who has suffered property damage or loss, monetary expense or physical injury or death, as a result of the defendant’s offense or criminal episode. s. 775.089(1)(c), F.S.

If the victim suffered bodily injury, the court *shall* require that the defendant pay for medical and related services, including physical therapy or psychological care, and lost income. Where no bodily injury resulted, the court *may* require payment for lost income. s. 775.089(2), F.S.

Any dispute as to the proper amount of restitution must be resolved by the court by a preponderance of the evidence. s. 775.089(7), F.S.

Restitution in animal-related cases is specifically addressed in two sections of the Florida Statutes. Section 825.125(4), F.S., provides that the aggrieved party in a case where registered horses or cattle are maimed or killed may recover, as part of the criminal case, up to twice the gross fair market value of the animal or up to twice the gross loss caused, whichever is greater, plus attorney’s fees and all related costs. s.825.125(4), F.S. In a case where a person commits the first degree misdemeanor offense of cutting or breaking another’s fence (thereby, presumably, letting livestock out of the enclosure), the court may require full compensation to the owner of the fence for “any and all damages or losses resulting directly or indirectly from the act.” s. 810.115, F.S.

III. Effect of Proposed Changes:

The bill creates a new section of the Florida Statutes for the protection of guide dogs and service animals. It is named after a dog named “Scanner.” The bill provides for three levels of offenses based upon the amount of damage done and the level of intent of the defendant.

The bill provides that a person who, through culpable negligence, interferes or permits a dog that he owns or is in the immediate control of, to interfere with the use of a guide dog or service animal is guilty of a second degree misdemeanor. A second or subsequent violation would be a first degree misdemeanor. Interfering with a guide dog or service animal includes obstructing, intimidating, or otherwise jeopardizing the safety of the animal or its user, under the provisions of the bill.

Any person who, through culpable negligence, injures or kills a guide dog or service animal, or permits a dog that he owns or is in the immediate control of to do the same is guilty of a first degree misdemeanor.

Any person who intentionally injures or kills a guide dog or service animal, or permits a dog that he owns or is in the immediate control of to do the same is guilty of a third degree felony.

A person who is convicted under the provisions of the bill would be ordered to pay restitution, which may include the value of the guide dog or service animal, replacement or re-training expenses, veterinary care, medical expenses for injuries sustained by the user, and lost income.

The bill amends s. 413.08, F.S., to extend the right to be accompanied by a service animal to people who suffer from seizure disorders. People who are deaf, hard of hearing, totally or partially blind, physically disabled, paraplegic or quadriplegic currently have that statutory right under that section.

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:

The Criminal Justice Impact Conference considered the House companion to this bill on February 22, 2002, which is substantially identical to SB 2210, and found that it would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.