

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 153 CS

Individuals With Disabilities

SPONSOR(S): Carroll

TIED BILLS:

IDEN./SIM. BILLS: SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Shoemaker</u>	<u>Liepshutz</u>
2) <u>Elder & Long-Term Care Committee</u>	<u>7 Y, 0 N</u>	<u>Walsh</u>	<u>Liem</u>
3) <u>State Administration Appropriations Committee</u>	<u>8 Y, 0 N</u>	<u>Dobbs</u>	<u>Belcher</u>
4) <u>Commerce Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Shoemaker</u>	<u>Bohannon</u>
5) <u>Commerce Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Shoemaker</u>	<u>Bohannon</u>

SUMMARY ANALYSIS

This bill significantly amends Fla. Stat. §§ 413.08 and 413.081 by updating the language so that it coincides with federal language in the Americans with Disabilities Act of 1990,¹ which preempts state and local law and regulations in this area. Specifically, Fla. Stat. § 413.08 is updated to include the following definitions using language that is similar to the federal statutes: direct threat, housing accommodation, individual with a disability, major life activities, mental impairment, physical impairment, place of public accommodation, service animal, substantially limits, and undue burden. Additionally, the proposed language changes the way in which state and local governments and public accommodation facilities must provide access to service animals that accompany individuals with disabilities. Finally, the bill increases the penalty for discriminating against an individual with a disability when one interferes with admittance to, or enjoyment of, a public accommodation or an employer discriminates against a person with a disability in the following way: a first offense remains a second degree misdemeanor as currently provided for in statute, but any subsequent offense is increased to a first degree misdemeanor.

This bill has an effective date of July 1, 2005 and is not expected to have any fiscal impact.

¹ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended in 42 U.S.C. §§ 12101-12213, 47 U.S.C. § 225, and 47 U.S.C. § 611) [hereinafter Americans with Disabilities Act].

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – To conform to federal law, this bill revises the access and services public accommodations and governmental entities must provide to disabled persons and broadens the definition of service animal that may accompany a disabled person. Further, this bill increases the penalty for one who denies admittance to a disabled person or interferes with the disabled person's enjoyment of a public accommodation.

Safeguard individual liberty – This bill codifies in state law the access and services already required by federal law that disabled persons have related to public accommodations and governmental entities and broadens the scope of "service animal" that may accompany disabled persons to said places.

Promote personal responsibility – This bill increases the penalty for one who denies admittance to a disabled person or interferes with the disabled person's enjoyment of a public accommodation.

B. EFFECT OF PROPOSED CHANGES:

Background

Since the 1960's, companion animals have been used to increase the physical mobility and personal independence of disabled people.² As the use of service animals climbed in popularity, individual States and the federal government enacted legislation providing access rights for these animals.³ While all fifty States have now passed legislation regarding service animal access,⁴ it is important to focus on federal legislation because when federal legislation provides greater protection for individuals with disabilities, it preempts local and state laws and regulations.⁵

The first piece of federal legislation enacted in this area was the Air Carrier Access Act of 1986.⁶ This regulation specifically clarifies that air carriers must allow "dogs and other service animals used by individuals with a disability to accompany the persons on a flight."⁷ A service animal is defined as "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items."⁸ To determine whether an animal boarding a carrier is a service animal, the Act states that "[c]arriers shall accept as evidence that an animal is a service animal" "written documentation," the presence of "harnesses," "markings," or "tags," "or the credible verbal assurances of the qualified individual with a disability using the animal."⁹

² Kelly Henderson, *No Dogs Allowed?*, FEDERAL POLICIES ON ACCESS FOR SERVICE ANIMALS (Animal Welfare Information Center), Summer 1996, at 1, <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm> [hereinafter Henderson]. Under federal law, the term "disability" in regard to an individual means: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (2005). See also 28 C.F.R. § 36.104 (2005) (explaining the terms physical and mental impairment and defining the scope of the term disability).

³ Henderson, *supra* note 2, at 2.

⁴ *Id.*

⁵ 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>.

⁶ Air Carrier Access Act, 49 U.S.C. app. 1374 (1986).

⁷ 14 C.F.R. § 382.55(a) (2005).

⁸ 28 C.F.R. § 36.104 (2005).

⁹ 14 C.F.R. § 382.55(a)(1) (2005).

In a second piece of legislation, Congress provided explicit rights to accommodations for persons with disabilities through the Fair Housing Amendments Act of 1988, which forbids discrimination based on a person's disability in the sale or rental of a dwelling.¹⁰ In a specific example, Congress made clear that reasonable accommodations should be made for service animals.¹¹

The final piece of legislation enacted by Congress in this area of law was the Americans with Disabilities Act of 1990.¹² Title III of this Act deals most directly with service animals and "prohibits discrimination of people with disabilities in public accommodations and services operated by public entities."¹³ Accordingly, a public accommodation is generally required to "modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability."¹⁴ However, a public accommodation is not required "to supervise or care for a service animal."¹⁵

Effect of Proposed Legislation

Examining the above federal legislation in comparison to the proposed bill shows that the proposed changes to Fla. Stat. §§ 413.08 and 413.081 would allow Florida law to more closely track the federal law governing the use of service animals. The bill does this in several ways.

First, 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.¹⁶ 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 to others for compensation not more than one room in the residence.
- "Individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more of his or her major life activities, has a record of such an impairment, or is regarded as having such an impairment. The term does not include an individual who has any of the following conditions: homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, a gender-identity disorder not resulting from physical impairments, any other sexual-behavior disorder, compulsive gambling, kleptomania, pyromania, or a psychoactive substance abuse disorder resulting from the current illegal use of drugs, or an individual who currently engages in the use of illegal drugs.

¹⁰ 42 U.S.C. § 3604 (2005).

¹¹ 24 C.F.R. § 100.204 (1989).

¹² Americans with Disabilities Act, *supra* note 1.

¹³ Henderson, *supra* note 2, at 4.

¹⁴ 28 C.F.R. § 36.302(c) (2005).

¹⁵ 28 C.F.R. § 36.302(c)(2) (2005).

¹⁶ Under federal law, a "direct threat" is defined as "a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." 42 U.S.C. § 12111 (2005).

- “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.¹⁷
- “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.
- “Place of public accommodation” means a facility operated by a private person at which 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; and
 - A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.
- “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 the impact of the condition 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.
- “Undue burden” means a significant difficulty or expense that is determined by considering:
 - The nature and costs of the action needed under this part;

¹⁷ Federal legislation provides a similar definition of “major life activities.” 42 U.S.C. §§ 12101-12213 (2005).

- The overall financial resources of the site involved in the action, the number of persons employed at the site; the effect on expenses and resources; safety requirements that are necessary for safe operation, including crime-prevention measures, and the impact of the action upon the operation of the site;
- The geographic separation and the administrative or fiscal relationship of the site in question to a parent corporation or entity;
- If applicable, the overall financial resources of a parent corporation or entity; the overall size of the parent corporation or entity with respect to its number of employees; and the number, type, and location of its facilities; and
- If applicable, the type of operations of a parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Second, 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. It 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. Further, a housing accommodation may request proof of compliance with vaccination requirements. But, an individual with a service animal may not be segregated from other customers or the public.

Third, 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.

Fourth, a proprietor or government employee is allowed 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. Further, an undue burden exception is created in that state and local governmental entities and public accommodations must accommodate service animals that assist individuals with disabilities *unless* doing so would result in an undue burden or fundamental alteration to the nature of the program, activity, service, facility, or business.

Finally, the bill increases the penalty for discriminating against an individual with a disability when one interferes with admittance to, or enjoyment of, a public accommodation or an employer discriminates against a person with a disability in the following way: a first offense remains a second degree misdemeanor as currently provided for in statute, but any subsequent offense is increased to a first degree misdemeanor.

C. SECTION DIRECTORY:

Section 1 revises Fla. Stat. § 413.08 so that it is similar to federal language related to service animals and persons with disabilities.

Section 2 amends Fla. Stat. § 413.081 to make conforming changes with the provisions of Section 1 of this bill. These changes include defining the term "service animal."

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Because this bill is similar to enacted federal law which preempts state law in this area, state government should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Because this bill is similar to enacted federal law which preempts state law in this area, local governments should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because this bill is similar to enacted federal law which already governs private entities, the private sector should already be adhering to the practices proposed in this bill and therefore, not incur any expenditures in complying with this legislation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2005, the Commerce Council adopted a strike-all amendment to the bill and reported the bill favorably with a CS. The strike-all amendment maintains all of the provisions of the original bill. However, the amendment added or expanded the following definitions:

- “Direct threat” was added to mean 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.¹⁸ 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.
- “Individual with a disability” was expanded to exclude from its definition individuals with any of the following conditions: homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, a gender-identity disorder not resulting from physical impairments, any other sexual-behavior disorder, compulsive gambling, kleptomania, pyromania, or a psychoactive substance abuse disorder resulting from the current illegal use of drugs, or an individual who currently engages in the use of illegal drugs.
- “Major life activities” was added to mean 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” was added to mean any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- “Physical impairment” was added to mean 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.
- “Substantially limits” was added to mean the impact of the condition 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.

In addition to creating the definitions above, the strike-all amendment did the following:

- Created an undue burden exception by stating that state and local governmental entities and public accommodations must accommodate service animals that assist individuals with disabilities *unless* doing so would result in an undue burden or fundamental alteration to the nature of the program, activity, service, facility, or business.
- Established that a housing accommodation may request proof of compliance with vaccination requirements.
- Increased the penalty for discriminating against an individual with a disability when one interferes with admittance to, or enjoyment of, a public accommodation or an employer discriminates against a person with a disability in the following way: a first offense remains a

¹⁸ Under federal law, a “direct threat” is defined as “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.” 42 U.S.C. § 12111 (2005).

second degree misdemeanor as currently provided for in statute, but any subsequent offense is increased to a first degree misdemeanor.

On April 20, 2005, the Commerce Council adopted a second amendment to the bill and reported the bill favorably with a CS. This amendment reinserted statutory language that had been stricken in the original version of HB 153 that states that employers cannot discriminate on the basis of disability alone “unless it is shown that the particular disability prevents the satisfactory performance of the work involved.”

The staff analysis was updated to reflect both amendments passed by the Commerce Council.