

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.

Safeguard individual liberty – This bill codifies in state law the requirements of federal law relating to disabled persons' access to and service by public accommodations and governmental entities. It broadens the scope of "service animals" 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

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 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, 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

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>.

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.

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., 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.

Effect of Proposed Changes

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. These revisions, including the deletion of obsolete language, would allow Florida law to more closely track the federal law governing the use of service animals. The bill provides definitions for the following:

- "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 severely limits the person's ability to perform one or more daily life living skills.
- "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.

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.

- 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.
- “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.

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. 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. 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 increases the penalty for discriminating against an individual with a disability when providing housing accommodations from a second degree misdemeanor to a first degree misdemeanor.

C. SECTION DIRECTORY:

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. These revisions, including the deletion of obsolete language, would allow Florida law to more closely track the federal law governing the use of service animals.

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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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