

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to individuals with disabilities; amending
7 s. 413.08, F.S.; providing definitions; providing that an
8 individual with a disability has full and equal access to
9 and enjoyment of public accommodations and state and local
10 governmental facilities, programs, services, and
11 activities; providing that an individual with a disability
12 may be accompanied by a service animal in places of public
13 accommodation and in state and local governmental
14 facilities, programs, services, and activities; requiring
15 state and local governmental entities and public
16 accommodations to accommodate service animals, with
17 certain exceptions; directing that documentation that a
18 service animal is trained may not be a precondition for
19 providing service to an individual accompanied by a
20 service animal; requiring that a service animal be given
21 access to all areas of a government facility or public
22 accommodation that the public or customers are normally
23 permitted to occupy; prohibiting segregating an individual

HB 153 CS

2005
CS

24 | with a service animal from other customers or the public;
25 | prohibiting a public accommodation from imposing a deposit
26 | or surcharge on an individual with a disability as a
27 | precondition to permitting a service animal to accompany
28 | the individual; providing that an individual with a
29 | disability may be liable for damage caused by a service
30 | animal; providing that the animal's owner is responsible
31 | for the care and supervision of a service animal;
32 | providing that the public accommodation or governmental
33 | entity is not required to provide care or food or a
34 | special location for a service animal; providing that a
35 | public accommodation or governmental entity may exclude or
36 | remove any animal from the premises if the animal's
37 | behavior poses a direct threat to the health and safety of
38 | others; increasing certain penalties for violations of the
39 | act; providing that the trainer of a service animal has
40 | the same rights and privileges as a person with a
41 | disability while training the service animal; providing
42 | that a housing accommodation may request proof of
43 | compliance with vaccination requirements; amending s.
44 | 413.081, F.S.; conforming provisions to changes made by
45 | the act; providing an effective date.

46

47 | Be It Enacted by the Legislature of the State of Florida:

48

49 | Section 1. Section 413.08, Florida Statutes, is amended to
50 | read:

51 413.08 Rights of individuals with disabilities who
 52 ~~physically disabled persons; use of dog guides or service~~
 53 ~~animals dogs or nonhuman primates of the genus Cebus;~~
 54 discrimination in public employment or housing accommodations;
 55 penalties.--

56 (1) As used in this section, the term:

57 (a) "Direct threat" means a determination that the person
 58 poses a significant risk to the health and safety of others
 59 which cannot be eliminated or reduced to an acceptable level. A
 60 direct threat cannot be based on generalizations or stereotypes
 61 about the effects of a particular disability; it must be based
 62 on an individual assessment that considers the particular
 63 activity and the actual abilities and disabilities of the
 64 individual. The assessment of a direct threat must be based on
 65 reasonable judgment that relies on current medical evidence or
 66 on the best available objective evidence to determine the
 67 nature, duration, and severity of the risk; the probability that
 68 the potential injury will actually occur; and whether reasonable
 69 modifications of policies, practices, or procedures will
 70 mitigate or eliminate the risk.

71 (b) "Housing accommodation" means any real property or
 72 portion thereof which is used or occupied, or intended,
 73 arranged, or designed to be used or occupied, as a home,
 74 residence, or sleeping place of one or more human beings. The
 75 term does not include a single-family residence if the occupants
 76 rent or lease to others for compensation not more than one room
 77 in the residence.

78 (c) "Individual with a disability" means a person who has
 79 a physical or mental impairment that substantially limits one or
 80 more of his or her major life activities, has a record of such
 81 an impairment, or is regarded as having such an impairment. The
 82 term does not include an individual who has any of the following
 83 conditions: homosexuality, bisexuality, transvestism,
 84 transsexualism, pedophilia, exhibitionism, voyeurism, a gender-
 85 identity disorder not resulting from physical impairments, any
 86 other sexual-behavior disorder, compulsive gambling,
 87 kleptomania, pyromania, or a psychoactive substance abuse
 88 disorder resulting from the current illegal use of drugs, or an
 89 individual who currently engages in the use of illegal drugs.

90 (d) "Major life activities" means activities that an
 91 average person can perform with little or no difficulty,
 92 including, but not limited to, walking, speaking, breathing,
 93 performing manual tasks, seeing, hearing, learning, caring for
 94 oneself, working, standing, lifting, and reading.

95 (e) "Mental impairment" means any mental or psychological
 96 disorder such as mental retardation, organic brain syndrome,
 97 emotional or mental illness, and specific learning disabilities.

98 (f) "Physical impairment" means a physiological disorder
 99 or condition, cosmetic disfigurement, or anatomical loss
 100 affecting one or more of the following body systems:
 101 neurological; musculoskeletal; sensory organs; respiratory,
 102 including speech organs; cardiovascular; reproductive;
 103 digestive; genitourinary; hemic and lymphatic; skin; and
 104 endocrine.

- 105 (g) "Place of public accommodation" means a facility
 106 operated by a private person at which operations affect commerce
 107 and fall within at least one of the following categories:
 108 1. An inn, hotel, motel, or other place of lodging, except
 109 for an establishment located within a building that contains not
 110 more than five rooms for rent or hire and that is actually
 111 occupied by the proprietor of the establishment as the residence
 112 of the proprietor;
 113 2. A restaurant, bar, or other establishment serving food
 114 or drink;
 115 3. A motion picture house, theater, concert hall, stadium,
 116 or other place of gathering;
 117 4. An auditorium, convention center, lecture hall, or
 118 other place of exhibition or entertainment;
 119 5. A bakery, grocery store, clothing store, hardware
 120 store, shopping center, or other sales or rental establishment;
 121 6. A laundromat, dry cleaner, bank, barber shop, beauty
 122 shop, travel service, shoe repair service, funeral parlor, gas
 123 station, office of a health care provider, hospital, or other
 124 service establishment;
 125 7. A terminal, depot, or other station used for specified
 126 public transportation;
 127 8. A museum, library, gallery, or other place of public
 128 display or collection;
 129 9. A park, zoo, amusement park, or other place of
 130 recreation;

131 10. A day care center, senior citizen center, homeless
 132 shelter, food bank, adoption agency, or other social services
 133 establishment; and

134 11. A gymnasium, health spa, bowling alley, golf course,
 135 or other place of exercise or recreation.

136 (h) "Service animal" means an animal that is trained to
 137 perform tasks for an individual with a disability. The tasks may
 138 include, but are not limited to, guiding a person who is
 139 visually impaired or blind, alerting a person who is deaf or
 140 hard of hearing, pulling a wheelchair, assisting with mobility
 141 or balance, alerting and protecting a person who is having a
 142 seizure, retrieving objects, or performing other special tasks.
 143 A service animal is not a pet.

144 (i) "Substantially limits" means the impact of the
 145 condition renders the individual unable to perform an activity
 146 compared to an average person in the general population. Factors
 147 to consider in determining whether an impairment substantially
 148 limits a major life activity include the nature and severity of
 149 the impairment, how long it will last or is expected to last,
 150 and its permanent or long-term impact or expected impact.

151 (j) "Undue burden" means a significant difficulty or
 152 expense that is determined by considering:

153 1. The nature and costs of the action needed under this
 154 part;

155 2. The overall financial resources of the site involved in
 156 the action, the number of persons employed at the site; the
 157 effect on expenses and resources; safety requirements that are
 158 necessary for safe operation, including crime-prevention

159 measures, and the impact of the action upon the operation of the
160 site;

161 3. The geographic separation and the administrative or
162 fiscal relationship of the site in question to a parent
163 corporation or entity;

164 4. If applicable, the overall financial resources of a
165 parent corporation or entity; the overall size of the parent
166 corporation or entity with respect to its number of employees;
167 and the number, type, and location of its facilities; and

168 5. If applicable, the type of operations of a parent
169 corporation or entity, including the composition, structure, and
170 functions of the workforce of the parent corporation or entity.

171 (2)(1)(a) An individual with a disability is ~~The deaf,~~
172 ~~hard of hearing, blind, visually handicapped, and otherwise~~
173 ~~physically disabled~~ are entitled to full and equal
174 accommodations, advantages, benefits, facilities, and privileges
175 on all common carriers, airplanes, motor vehicles, railroad
176 trains, motor buses, streetcars, boats, and other public
177 conveyances or modes of transportation; in all state and local
178 governmental facilities, programs, services, and activities; and
179 at hotels, lodging places, places of public accommodations
180 ~~accommodation, amusement, or resort,~~ and other places to which
181 the general public is invited, subject only to the conditions
182 and limitations established by law and applicable alike to all
183 persons. This section does not require any person, firm, or
184 ~~corporation, or any agent thereof, to modify or provide any~~
185 ~~vehicle, premises, facility, or service to a higher degree of~~
186 ~~accommodation than is required for a person not so disabled.~~

187 (3)(b) Every individual with a disability ~~deaf or hard of~~
 188 ~~hearing person, totally or partially blind person, person who is~~
 189 ~~subject to epilepsy or other such seizure disorders, or~~
 190 ~~physically disabled person~~ has the right to be accompanied by a
 191 ~~dog guide or service~~ animal dog, specially trained for the
 192 purpose, in any place of public accommodation or state or local
 193 governmental facility, program, service, or activity ~~the places~~
 194 ~~listed in paragraph (a) without being required to pay an extra~~
 195 ~~charge for the dog guide or service dog; however, such a person~~
 196 ~~is liable for any damage done to the premises or facilities by~~
 197 ~~such a dog. The dog guide or service dog must be capable of~~
 198 ~~being properly identified as being from a recognized school for~~
 199 ~~seeing eye dogs, hearing ear dogs, service dogs, including, but~~
 200 ~~not limited to, seizure alert and seizure response dogs, or~~
 201 ~~guide dogs.~~

202 (4) State and local governmental entities and public
 203 accommodations must accommodate service animals that assist
 204 individuals with disabilities unless doing so would result in an
 205 undue burden or fundamental alteration to the nature of the
 206 program, activity, service, facility, or business.

207 (5) Documentation that the service animal is trained is
 208 not a precondition for providing service to an individual
 209 accompanied by a service animal. A public accommodation or
 210 governmental entity may ask if an animal is a service animal or
 211 what tasks the animal has been trained to perform in order to
 212 determine the difference between a service animal and a pet.

213 (6) A service animal may accompany the individual with a
 214 disability to all areas of a government facility or public

215 accommodation that the public or customers are normally
 216 permitted to occupy. An individual with a service animal may not
 217 be segregated or treated in a manner that is unequal to that
 218 extended to other customers or the public.

219 (7)(a) A public accommodation may not impose a deposit or
 220 surcharge on an individual with a disability as a precondition
 221 to permitting a service animal to accompany the individual with
 222 a disability, even if a deposit is routinely required for pets.

223 (b) An individual with a disability is liable for damage
 224 caused by a service animal if it is the regular policy and
 225 practice of the public accommodation to charge nondisabled
 226 persons for damages caused by their pets.

227 (8) The care or supervision of a service animal is the
 228 responsibility of the individual owner. A public accommodation
 229 or governmental entity is not required to provide care or food
 230 or a special location for the service animal or assistance with
 231 removing animal excrement.

232 (9)(a) A public accommodation or governmental entity may
 233 exclude or remove any animal from the premises, including a
 234 service animal, if the animal's behavior poses a direct threat
 235 to the health and safety of others. Allergies and fear of
 236 animals are not valid reasons for denying access or refusing
 237 service to an individual with a service animal. The perception
 238 of a threat or fear based on past experience does not constitute
 239 a direct threat.

240 (b) If a service animal is excluded or removed as being a
 241 direct threat to others, the public accommodation or
 242 governmental entity must provide the individual with a

243 disability the option of continuing access to the public
 244 accommodation or governmental entity without having the service
 245 animal on the premises.

246 ~~(c) Every person with paraplegia or quadriplegia has the~~
 247 ~~right to be accompanied by a nonhuman primate of the genus~~
 248 ~~Cebus, specially trained for the purpose of providing personal~~
 249 ~~care services, in any of the places listed in paragraph (a)~~
 250 ~~without being required to pay an extra charge for the nonhuman~~
 251 ~~primate; however, such a person is liable for any damage done to~~
 252 ~~the premises or facilities by such nonhuman primate.~~

253 ~~(10)(2)~~ Any person, firm, business, or corporation, or the
 254 agent of any person, firm, business, or corporation, who denies
 255 or interferes with admittance to, or enjoyment of, the public
 256 accommodation of, facilities enumerated in subsection (1) or
 257 otherwise interferes with the rights of, an individual with a
 258 disability a deaf person, a hard of hearing person, a totally or
 259 partially blind person, a person who is subject to epilepsy or
 260 other such seizure disorders, or an otherwise physically
 261 disabled person under this section, or the trainer of a ~~dog~~
 262 ~~guide or service~~ animal ~~dog~~ while engaged in the training of the
 263 animal under such a dog pursuant to subsection (15) (7), commits
 264 is guilty of a misdemeanor of the second degree for the first
 265 offense and a misdemeanor of the first degree for each
 266 subsequent offense, punishable as provided in s. 775.082, ~~or~~ s.
 267 775.083, or s. 775.084.

268 ~~(11)(3)~~ It is the policy of this state that individuals
 269 with disabilities the deaf, hard of hearing, blind, visually
 270 handicapped, and otherwise physically disabled shall be employed

271 in the service of the state or political subdivisions of the
 272 state, in the public schools, and in all other employment
 273 supported in whole or in part by public funds, and an employer
 274 may not refuse employment to an individual with a disability ~~the~~
 275 ~~deaf, the hard of hearing, the blind, the visually handicapped,~~
 276 ~~or the otherwise physically disabled~~ on the basis of the
 277 disability alone, unless it is shown that the particular
 278 disability prevents the satisfactory performance of the work
 279 involved.

280 (12)(4) Each individual with a disability is ~~Deaf persons,~~
 281 ~~hard of hearing persons, blind persons, visually handicapped~~
 282 ~~persons, and otherwise physically disabled persons~~ are entitled
 283 to rent, lease, or purchase, as other members of the general
 284 public, any housing accommodations offered for rent, lease, or
 285 other compensation in this state, subject to the conditions and
 286 limitations established by law and applicable alike to all
 287 persons.

288 ~~(a) As used in this subsection, the term "housing~~
 289 ~~accommodations" means any real property or portion thereof which~~
 290 ~~is used or occupied, or intended, arranged, or designed to be~~
 291 ~~used or occupied, as the home, residence, or sleeping place of~~
 292 ~~one or more human beings, but does not include any single-family~~
 293 ~~residence the occupants of which rent, lease, or furnish for~~
 294 ~~compensation not more than one room therein.~~

295 ~~(b) This section does not require any person renting,~~
 296 ~~leasing, or otherwise providing real property for compensation~~
 297 ~~to modify her or his property in any way or provide a higher~~
 298 ~~degree of care for a deaf person, hard of hearing person, blind~~

299 ~~person, visually handicapped person, or otherwise physically~~
 300 ~~disabled person than for a person who is not so handicapped.~~

301 (13)(e) Each individual with a disability ~~deaf person,~~
 302 ~~hard of hearing person, totally or partially blind person, or~~
 303 ~~otherwise physically disabled person~~ who has a service animal
 304 ~~dog guide,~~ or who obtains a service animal ~~dog guide,~~ is
 305 entitled to full and equal access to all housing accommodations
 306 provided for in this section, and the ~~such a~~ person may ~~shall~~
 307 not be required to pay extra compensation for the service animal
 308 ~~dog guide~~. However, an individual with a disability ~~such a~~
 309 ~~person~~ is liable for any damage done to the premises or to
 310 another person on the premises by the service animal ~~such a dog~~
 311 ~~guide~~. A housing accommodation may request proof of compliance
 312 with vaccination requirements.

313 ~~(d) Each person with paraplegia or quadriplegia who has or~~
 314 ~~obtains a nonhuman primate of the genus Cebus, specially trained~~
 315 ~~for the purpose of providing personal care services, is entitled~~
 316 ~~to full and equal access to all housing accommodations provided~~
 317 ~~for in this section, and she or he shall not be required to pay~~
 318 ~~extra compensation for such a nonhuman primate. However, the~~
 319 ~~person is liable for any damage done to the premises by such a~~
 320 ~~nonhuman primate.~~

321 (14)(5) An ~~Any~~ employer covered under subsection (11) ~~(3)~~
 322 who discriminates against an individual with a disability ~~the~~
 323 ~~deaf, hard of hearing, blind, visually handicapped, or otherwise~~
 324 ~~physically disabled in employment, unless it is shown that the~~
 325 ~~particular disability prevents the satisfactory performance of~~
 326 ~~the work involved, or any person, firm, or corporation, or the~~

327 agent of any person, firm, business, or corporation, providing
 328 housing accommodations as provided in subsection (12) ~~(4)~~ who
 329 discriminates against an individual with a disability commits
 330 ~~the deaf, hard of hearing, blind, visually handicapped, or~~
 331 ~~otherwise physically disabled is guilty of a misdemeanor of the~~
 332 second degree for the first offense and a misdemeanor of the
 333 first degree for each subsequent offense, punishable as provided
 334 in s. 775.082, ~~or s. 775.083,~~ or s. 775.084.

335 ~~(6)(a) As used in this section, the term "physically~~
 336 ~~disabled person" means any person who has a physical impairment~~
 337 ~~that substantially limits one or more major life activities.~~

338 ~~(b) As used in this section, the term "hard of hearing~~
 339 ~~person" means an individual who has suffered a permanent hearing~~
 340 ~~impairment that is severe enough to necessitate the use of~~
 341 ~~amplification devices to discriminate speech sounds in verbal~~
 342 ~~communication.~~

343 ~~(15)(7) Any trainer of a dog guide or service animal dog,~~
 344 while engaged in the training of the service animal ~~such a dog,~~
 345 has the same rights and privileges with respect to access to
 346 public facilities and the same liability for damage as is
 347 provided for individuals with a disability ~~those persons~~
 348 ~~described in paragraph (1)(b) accompanied by a service animal~~
 349 ~~dog guides or service dogs.~~

350 ~~(8) Any trainer of a nonhuman primate of the genus Cebus,~~
 351 while engaged in training such a nonhuman primate to provide
 352 ~~personal care services to a person with paraplegia or~~
 353 ~~quadriplegia, has the same rights and privileges with respect to~~
 354 ~~access to public facilities and the same liability for damage as~~

355 ~~is provided for a person with paraplegia or quadriplegia who is~~
 356 ~~accompanied by nonhuman primates of the genus Cebus. As used in~~
 357 ~~this subsection, the term "trainer of a nonhuman primate of the~~
 358 ~~genus Cebus" means a paid employee of a training organization,~~
 359 ~~and does not include volunteers chosen to raise the animals.~~

360 Section 2. Section 413.081, Florida Statutes, is amended
 361 to read:

362 413.081 Interference with or injury to a guide dog or
 363 service animal; penalties; restitution.--

364 (1) A ~~Any~~ person who, with reckless disregard, interferes
 365 with, or permits any animal ~~a dog~~ that he or she owns or is in
 366 the immediate control of to interfere, with, the use of a guide
 367 ~~dog or~~ service animal by obstructing, intimidating, or otherwise
 368 jeopardizing the safety of the service animal or its user
 369 commits ~~is guilty of~~ a misdemeanor of the second degree for the
 370 first offense and a misdemeanor of the first degree for each
 371 subsequent offense, punishable as provided in s. 775.082 or s.
 372 775.083.

373 (2) A ~~Any~~ person who, with reckless disregard, injures or
 374 kills, or permits a dog that he or she owns or is in the
 375 immediate control of to injure or kill, a guide dog or service
 376 animal commits ~~is guilty of~~ a misdemeanor of the first degree,
 377 punishable as provided in s. 775.082 or s. 775.083.

378 (3) A ~~Any~~ person who intentionally injures or kills, or
 379 permits a dog that he or she owns or is in the immediate control
 380 of to injure or kill, a guide dog or service animal commits ~~is~~
 381 ~~guilty of~~ a felony of the third degree, punishable as provided
 382 in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

383 (4)(a) A person who is convicted of a violation of this
 384 section, in addition to any other penalty, must make full
 385 restitution for all damages that arise out of or are related to
 386 the offense, including incidental and consequential damages
 387 incurred by the ~~guide dog~~ or service animal's user.

388 (b) Restitution includes the value of the service animal;
 389 replacement and training or retraining expenses for the service
 390 animal and the user; veterinary and other medical and boarding
 391 expenses for the service animal; medical expenses for the user;
 392 and lost wages or income incurred by the user during any period
 393 that the user is without the services of the service ~~such an~~
 394 animal.

395 (5) As used in this section, the term "service animal"
 396 means an animal that is trained to perform tasks for an
 397 individual with a disability. The tasks may include, but are not
 398 limited to, guiding a person who is visually impaired or blind,
 399 alerting a person who is deaf or hard of hearing, pulling a
 400 wheelchair, assisting with mobility or balance, alerting and
 401 protecting a person who is having a seizure, retrieving objects,
 402 or performing other special tasks. A service animal is not a
 403 pet.÷

404 ~~(a) "Guide dog" means a dog that is trained for the~~
 405 ~~purpose of guiding blind persons or a dog trained for the~~
 406 ~~purpose of assisting hearing impaired persons.~~

407 ~~(b) "Service animal" means an animal that is trained for~~
 408 ~~the purposes of assisting or accommodating a disabled person's~~
 409 ~~sensory, mental, or physical disability.~~

410 Section 3. This act shall take effect July 1, 2005.