

By the Committee on Governmental Oversight and Productivity;
and Senators Wise, Fasano, Haridopolos and Rich

585-1652-05

1 A bill to be entitled

2 An act relating to individuals with

3 disabilities; amending s. 413.08, F.S.;

4 providing definitions; providing that an

5 individual with a disability has full and equal

6 access to and enjoyment of public

7 accommodations and state and local facilities,

8 programs, services, and activities; providing

9 that an individual with a disability may be

10 accompanied by a service animal in places of

11 public accommodation and in state and local

12 facilities; directing that documentation that a

13 service animal is trained may not be a

14 precondition for providing service to an

15 individual accompanied by a service animal;

16 requiring that a service animal be given access

17 to all areas of a government facility or public

18 accommodation that the public or customers are

19 normally permitted to occupy; prohibiting

20 segregating an individual with a service animal

21 from other customers or the public; prohibiting

22 a public accommodation from imposing a deposit

23 or surcharge on an individual with a disability

24 as a precondition to permitting a service

25 animal to accompany the individual; providing

26 that an individual with a disability may be

27 liable for damage caused by a service animal;

28 providing that the animal's owner is

29 responsible for the care and supervision of a

30 service animal; providing that the public

31 accommodation or government entity is not

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 required to provide care or food or a special
2 location for a service animal; providing that a
3 public accommodation or government entity may
4 exclude or remove any animal from the premises
5 if the animal's behavior poses a direct threat
6 to the health and safety of others; increasing
7 certain penalties for violations of the act;
8 providing that the trainer of a service animal
9 has the same rights and privileges as a person
10 with a disability while training the service
11 animal; amending s. 413.081, F.S.; conforming
12 provisions to changes made by the act;
13 providing an effective date.
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15 Be It Enacted by the Legislature of the State of Florida:
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17 Section 1. Section 413.08, Florida Statutes, is
18 amended to read:

19 413.08 Rights of individuals with disabilities who
20 ~~physically disabled persons;~~ use of dog guides or service
21 animals dogs or nonhuman primates of the genus Cebus;
22 discrimination in public employment or housing accommodations;
23 penalties.--

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

25 (a) "Direct threat" means a determination that the
26 person poses a significant risk to the health and safety of
27 others which cannot be eliminated or reduced to an acceptable
28 level. A direct threat cannot be based on generalizations or
29 stereotypes about the effects of a particular disability; it
30 must be based on an individual assessment that considers the
31 particular activity and the actual abilities and disabilities

1 of the individual. The assessment of a direct threat must be
2 based on reasonable judgment that relies on current medical
3 evidence, or on the best available objective evidence, to
4 determine the nature, duration, and severity of the risk; the
5 probability that the potential injury will actually occur; and
6 whether reasonable modifications of policies, practices, or
7 procedures will mitigate or eliminate the risk.

8 (b) "Housing accommodation" means any real property or
9 portion thereof which is used or occupied, or intended,
10 arranged, or designed to be used or occupied, as a home,
11 residence, or sleeping place of one or more human beings. The
12 term does not include a single-family residence if the
13 occupants rent or lease to others for compensation not more
14 than one room in the residence.

15 (c) "Individual with a disability" means a person who
16 has a physical or mental impairment that substantially limits
17 one or more of his or her major life activities, has a record
18 of such an impairment, or is regarded as having such an
19 impairment. The term does not include an individual who has
20 any of the following conditions: homosexuality, bisexuality,
21 transvestism, transsexualism, pedophilia, exhibitionism,
22 voyeurism, a gender-identity disorder not resulting from
23 physical impairments, any other sexual-behavior disorder,
24 compulsive gambling, kleptomania, pyromania, or a psychoactive
25 substance abuse disorder resulting from the current illegal
26 use of drugs, or an individual who currently engages in the
27 use of illegal drugs.

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

3 (e) "Mental impairment" means any mental or
4 psychological disorder, such as mental retardation, organic
5 brain syndrome, emotional or mental illness, and specific
6 learning disabilities.

7 (f) "Physical impairment" means a physiological
8 disorder or condition, cosmetic disfigurement, or anatomical
9 loss affecting one or more of the following body systems:
10 neurological; musculoskeletal; sensory organs; respiratory,
11 including speech organs; cardiovascular; reproductive;
12 digestive; genitourinary; hemic and lymphatic; skin; and
13 endocrine.

14 (g) "Place of public accommodation" means a facility,
15 operated by a private person, whose operations affect commerce
16 and fall within at least one of the following categories:

17 1. An inn, hotel, motel, or other place of lodging,
18 except for an establishment located within a building that
19 contains not more than five rooms for rent or hire and that is
20 actually occupied by the proprietor of the establishment as
21 the residence of the proprietor;

22 2. A restaurant, bar, or other establishment serving
23 food or drink;

24 3. A motion picture house, theater, concert hall,
25 stadium, or other place of gathering;

26 4. An auditorium, convention center, lecture hall, or
27 other place of exhibition or entertainment;

28 5. A bakery, grocery store, clothing store, hardware
29 store, shopping center, or other sales or rental
30 establishment;

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1 6. A laundromat, dry cleaner, bank, barber shop,
2 beauty shop, travel service, shoe repair service, funeral
3 parlor, gas station, office of a health care provider,
4 hospital, or other service establishment;

5 7. A terminal, depot, or other station used for
6 specified public transportation;

7 8. A museum, library, gallery, or other place of
8 public display or collection;

9 9. A park, zoo, amusement park, or other place of
10 recreation;

11 10. A day care center, senior citizen center, homeless
12 shelter, food bank, adoption agency, or other social services
13 establishment; and

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

16 (h) "Service animal" means an animal that is trained
17 to perform tasks for an individual with a disability. The
18 tasks may include, but are not limited to, guiding a person
19 who is visually impaired or blind, alerting a person who is
20 deaf or hard of hearing, pulling a wheelchair, assisting with
21 mobility or balance, alerting and protecting a person who is
22 having a seizure, retrieving objects, or performing other
23 special tasks. A service animal is not a pet.

24 (i) "Substantially limits" means renders the
25 individual unable to perform an activity compared to an
26 average person in the general population. Factors to consider
27 in determining whether an impairment substantially limits a
28 major life activity include the nature and severity of the
29 impairment, how long it will last or is expected to last, and
30 its permanent or long-term impact or expected impact.

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1 ~~(2)(1)(a)~~ An individual with a disability is ~~The deaf,~~
2 ~~hard of hearing, blind, visually handicapped, and otherwise~~
3 ~~physically disabled~~ are entitled to full and equal
4 accommodations, advantages, facilities, and privileges on all
5 common carriers, airplanes, motor vehicles, railroad trains,
6 motor buses, streetcars, boats, and other public conveyances
7 or modes of transportation; in all state and local government
8 facilities, programs, services, and activities; and at ~~hotels,~~
9 ~~lodging places,~~ places of public accommodations ~~accommodation,~~
10 ~~amusement, or resort,~~ and other places to which the general
11 public is invited, subject only to the conditions and
12 limitations established by law and applicable alike to all
13 persons. ~~This section does not require any person, firm, or~~
14 ~~corporation, or any agent thereof, to modify or provide any~~
15 ~~vehicle, premises, facility, or service to a higher degree of~~
16 ~~accommodation than is required for a person not so disabled.~~

17 ~~(3)(b)~~ Every individual with a disability ~~deaf or hard~~
18 ~~of hearing person, totally or partially blind person, person~~
19 ~~who is subject to epilepsy or other such seizure disorders, or~~
20 ~~physically disabled person~~ has the right to be accompanied by
21 a ~~dog guide or service~~ animal dog, specially trained for the
22 purpose, in any place of public accommodation or state or
23 local government facility, program, service, or activity ~~the~~
24 ~~places listed in paragraph (a) without being required to pay~~
25 ~~an extra charge for the dog guide or service dog; however,~~
26 ~~such a person is liable for any damage done to the premises or~~
27 ~~facilities by such a dog. The dog guide or service dog must be~~
28 ~~capable of being properly identified as being from a~~
29 ~~recognized school for seeing eye dogs, hearing ear dogs,~~
30 ~~service dogs, including, but not limited to, seizure alert and~~
31 ~~seizure response dogs, or guide dogs.~~

1 (4) Documentation that the service animal is trained
2 is not a precondition for providing service to an individual
3 accompanied by a service animal. A public accommodation or
4 government entity may ask if an animal is a service animal or
5 what tasks the animal has been trained to perform in order to
6 determine the difference between a service animal and a pet.

7 (5) A service animal may accompany the individual with
8 a disability to all areas of a government facility or public
9 accommodation that the public or customers are normally
10 permitted to occupy. An individual with a service animal may
11 not be segregated from other customers or the public.

12 (6)(a) A public accommodation may not impose a deposit
13 or surcharge on an individual with a disability as a
14 precondition to permitting a service animal to accompany the
15 individual with a disability, even if a deposit is routinely
16 required for pets.

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

21 (7) The care or supervision of a service animal is the
22 responsibility of the individual owner. A public accommodation
23 or government entity is not required to provide care or food
24 or a special location for the service animal.

25 (8)(a) A public accommodation or government entity may
26 exclude or remove any animal from the premises, including a
27 service animal, if the animal's behavior poses a direct threat
28 to the health and safety of others. Allergies and fear of
29 animals are not valid reasons for denying access or refusing
30 service to an individual with a service animal. The perception
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1 of a threat or fear based on past experience does not
2 constitute a direct threat.

3 (b) If a service animal is excluded or removed as
4 being a direct threat to others, the public accommodation or
5 government entity must provide the individual with a
6 disability the option of continuing access to the public
7 accommodation or government entity without having the service
8 animal on the premises.

9 ~~(c) Every person with paraplegia or quadriplegia has~~
10 ~~the right to be accompanied by a nonhuman primate of the genus~~
11 ~~Cebus, specially trained for the purpose of providing personal~~
12 ~~care services, in any of the places listed in paragraph (a)~~
13 ~~without being required to pay an extra charge for the nonhuman~~
14 ~~primate; however, such a person is liable for any damage done~~
15 ~~to the premises or facilities by such nonhuman primate.~~

16 (9)(2) Any person, firm, business, or corporation, or
17 the agent of any person, firm, business, or corporation, who
18 denies or interferes with admittance to, or enjoyment of, the
19 public accommodation of, facilities enumerated in subsection
20 (1) or otherwise interferes with the rights of, an individual
21 with a disability a deaf person, a hard of hearing person, a
22 totally or partially blind person, a person who is subject to
23 epilepsy or other such seizure disorders, or an otherwise
24 physically disabled person under this section, or the trainer
25 of a dog guide or service animal dog while engaged in the
26 training of the animal under such a dog pursuant to subsection
27 (14)(7), commits is guilty of a misdemeanor of the second
28 degree for the first offense and a misdemeanor of the first
29 degree for each subsequent offense, punishable as provided in
30 s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

1 ~~(10)(3)~~ It is the policy of this state that
2 individuals with disabilities ~~the deaf, hard of hearing,~~
3 ~~blind, visually handicapped, and otherwise physically disabled~~
4 ~~shall~~ be employed in the service of the state or political
5 subdivisions of the state, in the public schools, and in all
6 other employment supported in whole or in part by public
7 funds, and an employer may not refuse employment to an
8 individual with a disability ~~the deaf, the hard of hearing,~~
9 ~~the blind, the visually handicapped, or the otherwise~~
10 ~~physically disabled~~ on the basis of the disability alone,
11 ~~unless it is shown that the particular disability prevents the~~
12 ~~satisfactory performance of the work involved.~~

13 ~~(11)(4)~~ Each individual with a disability is Deaf
14 ~~persons, hard of hearing persons, blind persons, visually~~
15 ~~handicapped persons, and otherwise physically disabled persons~~
16 ~~are~~ entitled to rent, lease, or purchase, as other members of
17 the general public, any housing accommodations offered for
18 rent, lease, or other compensation in this state, subject to
19 the conditions and limitations established by law and
20 applicable alike to all persons.

21 ~~(a)~~ ~~As used in this subsection, the term "housing~~
22 ~~accommodations" means any real property or portion thereof~~
23 ~~which is used or occupied, or intended, arranged, or designed~~
24 ~~to be used or occupied, as the home, residence, or sleeping~~
25 ~~place of one or more human beings, but does not include any~~
26 ~~single family residence the occupants of which rent, lease, or~~
27 ~~furnish for compensation not more than one room therein.~~

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

1 ~~blind person, visually handicapped person, or otherwise~~
2 ~~physically disabled person than for a person who is not so~~
3 ~~handicapped.~~

4 (12)(c) Each individual with a disability ~~deaf person,~~
5 ~~hard of hearing person, totally or partially blind person, or~~
6 ~~otherwise physically disabled person~~ who has a service animal
7 ~~dog guide~~, or who obtains a service animal ~~dog guide~~, is
8 entitled to full and equal access to all housing
9 accommodations provided for in this section, and ~~the such a~~
10 person ~~may shall~~ not be required to pay extra compensation for
11 the service animal ~~dog guide~~. However, an individual with a
12 disability ~~such a person~~ is liable for any damage done to the
13 premises by ~~such a~~ service animal ~~dog guide~~.

14 (d) ~~Each person with paraplegia or quadriplegia who~~
15 ~~has or obtains a nonhuman primate of the genus Cebus,~~
16 ~~specially trained for the purpose of providing personal care~~
17 ~~services, is entitled to full and equal access to all housing~~
18 ~~accommodations provided for in this section, and she or he~~
19 ~~shall not be required to pay extra compensation for such a~~
20 ~~nonhuman primate. However, the person is liable for any damage~~
21 ~~done to the premises by such a nonhuman primate.~~

22 (13)(5) An ~~Any~~ employer covered under subsection (10)
23 ~~(3)~~ who discriminates against an individual with a disability
24 ~~the deaf, hard of hearing, blind, visually handicapped, or~~
25 ~~otherwise physically disabled in employment, unless it is~~
26 ~~shown that the particular disability prevents the satisfactory~~
27 ~~performance of the work involved, or any person, firm, or~~
28 ~~corporation,~~ or the agent of any person, firm, business, or
29 corporation, providing housing accommodations as provided in
30 subsection(11)(4) who discriminates against an individual
31 with a disability ~~commits the deaf, hard of hearing, blind,~~

1 ~~visually handicapped, or otherwise physically disabled is~~
2 ~~guilty of a misdemeanor of the second degree for the first~~
3 ~~offense and a misdemeanor of the first degree for each~~
4 ~~subsequent offense, punishable as provided in s. 775.082, ~~or~~~~
5 ~~s. 775.083, or s. 755.084.~~

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

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

15 ~~(14)(7) Any trainer of a ~~dog guide or service~~ animal~~
16 ~~~~dog~~, while engaged in the training of the service animal ~~such~~~~
17 ~~a ~~dog~~, has the same rights and privileges with respect to~~
18 ~~access to public facilities and the same liability for damage~~
19 ~~as is provided for individuals with a disability ~~those persons~~~~
20 ~~~~described in paragraph (1)(b)~~ accompanied by a service animal~~
21 ~~~~dog guides or service dogs~~.~~

22 ~~(8) Any trainer of a nonhuman primate of the genus~~
23 ~~Cebus, while engaged in training such a nonhuman primate to~~
24 ~~provide personal care services to a person with paraplegia or~~
25 ~~quadriplegia, has the same rights and privileges with respect~~
26 ~~to access to public facilities and the same liability for~~
27 ~~damage as is provided for a person with paraplegia or~~
28 ~~quadriplegia who is accompanied by nonhuman primates of the~~
29 ~~genus Cebus. As used in this subsection, the term "trainer of~~
30 ~~a nonhuman primate of the genus Cebus" means a paid employee~~
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1 ~~of a training organization, and does not include volunteers~~
2 ~~chosen to raise the animals.~~

3 Section 2. Section 413.081, Florida Statutes, is
4 amended to read:

5 413.081 Interference with or injury to a ~~guide dog or~~
6 service animal; penalties; restitution.--

7 (1) A ~~Any~~ person who, with reckless disregard,
8 interferes with, or permits any animal ~~a dog~~ that he or she
9 owns or is in the immediate control of to interfere~~r~~, with, the
10 use of a ~~guide dog or~~ service animal by obstructing,
11 intimidating, or otherwise jeopardizing the safety of the
12 service animal or its user commits ~~is guilty of~~ a misdemeanor
13 of the second degree for the first offense and a misdemeanor
14 of the first degree for each subsequent offense, punishable as
15 provided in s. 775.082 or s. 775.083.

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

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

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

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1 (b) Restitution includes the value of the service
2 animal; replacement and training or retraining expenses for
3 the service animal and the user; veterinary and other medical
4 and boarding expenses for the service animal; medical expenses
5 for the user; and lost wages or income incurred by the user
6 during any period that the user is without the services of the
7 service ~~such an~~ animal.

8 (5) As used in this section, the term "service animal"
9 means an animal that is trained to perform tasks for an
10 individual with a disability. The tasks may include, but are
11 not limited to, guiding a person who is visually impaired or
12 blind, alerting a person who is deaf or hard of hearing,
13 pulling a wheelchair, assisting with mobility or balance,
14 alerting and protecting a person who is having a seizure,
15 retrieving objects, or performing other special tasks. A
16 service animal is not a pet.+

17 ~~(a) "Guide dog" means a dog that is trained for the~~
18 ~~purpose of guiding blind persons or a dog trained for the~~
19 ~~purpose of assisting hearing impaired persons.~~

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

23 Section 3. This act shall take effect July 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 434

Creates definitions based on the federal standards for "direct threat," "housing accommodation," "individual with a disability," "major life activities," "mental impairment," "physical impairment," "place of public accommodation," and "substantially limits."

Provides that the first violation for discriminating against an individual with a disability, when providing housing accommodations, is a second degree misdemeanor and that subsequent violations are misdemeanors of the first degree.