

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 1496

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Service Animals for Individuals with Disabilities

DATE: March 14, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/CS
2.			GO	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) redefines the term “individual with a disability” to mirror federal law. It also provides any individual, including any volunteer, raising a puppy for future training as a service animal with the same public access that an individual with a disability who is accompanied by a service animal would have and applies the same liability for damage, provided certain conditions are met.

This CS amends section 413.08 of the Florida Statutes.

II. Present Situation:

Definition of Disability

For purposes of the Americans with Disabilities Act, an individual with a “disability” is defined as having “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”¹

¹ 28 C.F.R. § 36.104.

Service Animals

Service animals have been used since the 1960's to provide greater independence for individuals with disabilities.² Beginning in the 1970's, service animals were trained to provide specialized services to individuals with disabilities. These specialized services 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, and retrieving objects.³ Various animals may be used as service animals depending on their temperaments, limitations, and skills.⁴ While guide dogs are the most commonly identified service animal, other service animals may include cats, potbellied pigs, capuchin monkeys, miniature horses, and birds that are also being trained to assist individuals with disabilities.

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.⁵ 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." An example of a reasonable accommodation includes allowing service animals.⁶ Later, the Americans with Disabilities Act (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 do work or perform tasks for the benefit of an individual with a disability..."⁷ A public accommodation is generally required to modify, policies, practices, and procedures to allow an individual with a disability to be accompanied by a service animal.⁸

Currently, all 50 states have legislation addressing the issue of service dogs.⁹ 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 preempts state and local laws. In 2005, Florida law was significantly amended to more closely mirror certain provisions in the ADA.¹⁰ Specifically, the Legislature revised definitions and changed the way in which state and local governments and public accommodation facilities must provide access to service animals that accompany individuals with disabilities.

Public Access for Service Animals

² 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>.

³ Section 413.08(1)(d), F.S.

⁴ See Job Accommodation Network at <http://www.jan.wvu.edu/media/servanim.html>, published with the support of the Office of Disability Employment Policy of the U.S. Department of Labor (last visited March 10, 2008).

⁵ 14 C.F.R. § 382.55.

⁶ 24 C.F.R. § 100.204.

⁷ 28 C.F.R. § 36.104.

⁸ 28 C.F.R. § 36.302(c).

⁹ See *supra* note 1.

¹⁰ Ch. 2005-63, L.O.F.

The federal laws granting public access to individuals with a disability who are accompanied by a service animal do not apply to persons with an animal being raised for training at a future date. Florida law does provide public access to any trainer of a service animal who is engaged in the training of such animal under s. 413.08, F.S., but this access does not extend to animals being raised for training. Some states do provide public access for young animals that will begin training at a later date for the purposes of socializing the animal.

Subsection (3) of s. 413.08, F.S., provides that an individual with a disability has the right to be accompanied by a service animal in all areas the public or customers are normally permitted to occupy. The individual does not have to carry documentation showing the service animal has been trained. However, the individual may be asked if the animal is a service animal and what tasks the animal has been trained to perform. An individual with a disability is liable for damage caused by his or her service animal if it is the regular practice to charge nondisabled persons for damage caused by pets. The public accommodation does not have to provide food, care, or a special area for a service animal. Service animals may be removed if the animal's behavior poses a threat to the health and safety of others, but the individual with a disability must be provided continued access to the public accommodation without the service animal. Allergies and fear of animals are not valid reasons for denying access to an individual accompanied by a service animal.

III. Effect of Proposed Changes:

Section 413.08, F.S., is amended to redefine the term "individual with a disability" as an individual who has:

- A physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such impairment; or
- Is regarded as having such an impairment.

Under this CS, an individual, including any volunteer, who raises a puppy for the purpose of future training as a service animal has the same public access as an individual with a disability who is accompanied by a service animal and the same liability for damage provided:

- The animal is held on a leash or is otherwise restrained and remains under the control of the volunteer;
- The volunteer training or raising the animal has on his or her person, and available for inspection, credentials from the accredited school where the animal will receive its training; and
- The animal is wearing a collar, leash, or other apparel or device that identifies the animal with the accredited school.

The CS takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The CS revises the definition of the term “individual with a disability,” removes language expanding the definition of “service animal,” and makes other clarifying changes.

B. Amendments:

None.