

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1077 Service Animals

**SPONSOR(S):** Civil Justice Subcommittee; Health & Human Services Access Subcommittee; Kriseman and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee	13 Y, 0 N, As CS	Cary	Bond
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Current law regarding the rights and benefits of a physical disability to individuals generally does not apply to a psychological or neurological disability. For the purpose of anti-discrimination laws, a disability is generally related to hearing, eyesight, or a physical impairment that substantially limits one or more major life activities. The use of service animals is limited to a person with such a disability.

This bill is the "Dawson and David Caras Act." In addition to extending the use of service animals to a person with a psychological or neurological disability, the bill:

- Creates definitions for "individual requiring assistance", "owner", and "service animal" relating to the use of service animals.
- Provides that if federal law, rule or agency requires a public accommodation to provide care, food, or a special location for an animal to relieve itself, that public accommodation must do so.
- Provides that a person, firm or corporation, may not deny or interfere with the renting, leasing, or purchasing of housing accommodations for an individual requiring assistance or a service animal trainer.
- Provides that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations.
- Provides that a trainer of service animals has the same rights, privileges and liabilities as an individual requiring assistance as it relates to a service animal.
- Creates a new second-degree misdemeanor for any person who knowingly and fraudulently misrepresents himself or herself as a service animal trainer.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### *Americans with Disabilities Act (ADA)*

The Americans with Disabilities Act defines an individual with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The ADA provides that persons with disabilities may not be discriminated against when applying for a job, and that public services and transportation must accommodate such individuals.<sup>1</sup>

The ADA provides that an individual with a disability is permitted to bring their service animal with them to publicly and privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.<sup>2</sup>

Effective March 15, 2011, the federal Department of Justice (DOJ) offered definitions relating to nondiscrimination on the basis of disability by public accommodations and in commercial facilities. According to DOJ's definitions, a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. . ." Other species of animals are specifically excluded from the definition of service animals. Furthermore, according to DOJ, the "provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."<sup>3</sup>

###### *Fair Housing Act*

The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. The Fair Housing Act includes private housing, housing that receives Federal financial assistance, and state and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence.<sup>4</sup>

The U.S. Department of Housing and Urban Development (HUD) investigates complaints of violations against the Fair Housing Act, including discrimination in housing.<sup>5</sup> If a person is convicted of violating the Fair Housing Act, that person may be required to do the following:

- Compensate the victim for actual damages, including humiliation, pain and suffering;
- Provide injunctive or other equitable relief;
- Pay the Federal Government a civil penalty to vindicate the public interest. The maximum penalties are \$16,000 for a first violation and \$65,000 for a third violation within seven years.
- Pay reasonable attorney's fees and costs.<sup>6</sup>

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<sup>1</sup> 42 U.S.C. 12101, et. seq.

<sup>2</sup> *Id.*

<sup>3</sup> 28 C.F.R. s. 36.104.

<sup>4</sup> 42 U.S.C. s. 3601, et. seq.

<sup>5</sup> U.S. Department of Housing and Urban Development. Housing.

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/enforcement](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement) (last visited January 27, 2012).

<sup>6</sup> *Id.*

The ADA defines service animals as animals that are individually trained to perform tasks for people with disabilities such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks.<sup>7</sup> Most service animals are dogs,<sup>8</sup> however, monkeys,<sup>9</sup> miniature horses,<sup>10</sup> and other animals are also used for this function. Prior to an animal being used by an individual with a disability, the animal generally goes through a training course with a service animal trainer. The American Behavior College provides courses for people interested in becoming a certified dog trainer; courses include, but are not limited to: a basic study of canines, learning theory, training, obedience and safety.<sup>11</sup> Similar courses are also available for miniature horse trainers<sup>12</sup> and monkey trainers.<sup>13</sup>

### **Effects of the Bill**

The creates the "Dawson and David Caras Act". David Caras is a puppy raiser/trainer for Southeastern Guide Dogs. Dawson was the name of the dog he was training when they ran into difficulties related to housing accommodations. They live in St. Petersburg.

The bill amends s. 413.08, F.S., to remove references to service animals. The bill creates s. 413.083, F.S., relating to the use of a service animal.

Section 413.083(1), F.S., provides definitions for "individual requiring assistance", "owner", and "service animal" for use in that that section. The definition of "individual requiring assistance" includes the definitions currently provided in s. 413.08(1)(b), F.S., but also includes a person who has a psychological or neurological disability. The definition of "owner" includes a person who is authorized by the owner to use a service animal. The definition of "service animal" tracks the federal Department of Justice definition, except that the Florida definition includes animals other than dogs.

Section 413.083(2), F.S., specifies that an individual with a disability or a person who trains service animals and is a student at a public or private school in this state has the right to be accompanied by a service animal. The ADA provides that public and privately owned facilities, which include schools, are required to allow an individual with a disability to be accompanied by a service animal.<sup>14</sup>

Current Florida law does not require a public accommodation to provide care, food or a special location for the service animal to relieve itself. Section 413.083(2)(d), F.S., provides that if federal law, rule or agency requires a public accommodation to provide such services, it must do so. Additionally, if a public accommodation has a secured area, a special location shall be designated for the service animal to relieve itself.

Section 413.083(2)(e), F.S., provides that a public accommodation may exclude or remove an animal from the premises if the animal fails to remain under the control of the handler or if the animal's behavior is inappropriate. The bill specifies that inappropriate behavior includes, but is not limited to, growling, excessive barking, or biting.

Section 413.083(3), F.S., provides that any person, firm, corporation, or the agent of any person, firm or corporation, who denies or interferes with the renting, leasing, or purchasing of housing accommodations for an individual with a disability or a trainer of a service animal commits a noncriminal violation, punishable as provided by s. 775.083, F.S., limited to a civil penalty of \$50 plus court costs. A subsequent offense is a misdemeanor of the second degree, punishable as provided in

<sup>7</sup> Americans with Disabilities Brief, Service Animals, April 2002. <http://www.ada.gov/svcanimb.htm> (last visited January 27, 2012).

<sup>8</sup> International Association of Assistance Dog Partners. <http://www.iaadp.org/A-dogWorld.html> (last visited January 27, 2012).

<sup>9</sup> Helping Hands, Monkey Helpers for the Disabled. <http://www.monkeyhelpers.org/index.html> (last visited January 27, 2012).

<sup>10</sup> The Guide Horse Foundation. <http://www.guidehorse.org/> (last visited January 27, 2012).

<sup>11</sup> American Behavior College. <http://www.animalbehaviorcollege.com/curriculum.asp> (last visited January 27, 2012).

<sup>12</sup> The Guide Horse Foundation. <http://www.guidehorse.org/> (last visited January 27, 2012).

<sup>13</sup> Helping Hands, Monkey Helpers for the Disabled. <http://www.monkeyhelpers.org/index.html> (last visited January 27, 2012).

<sup>14</sup> 42 U.S.C. 12101.

ss. 775.082, or s. 775.083, F.S. A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and/or a maximum fine of \$500, plus court costs.

Section 413.083(4), F.S., provides that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations and provides that a trainer of a service animal is also entitled to full and equal advantages, facilities and privileges in all housing accommodations and may not be required to pay extra compensation for the service animal.

Section 413.083(5), F.S., provides that any person who trains a public service animal has the same rights and access to public and housing accommodations as an individual with a disability, as long as the trainer is training the animal.

Section 413.083(6), F.S., provides that any person who knowingly and fraudulently represents himself or herself as a service animal trainer commits a misdemeanor of the second degree, punishable as provided by ss. 775.082 or s. 775.083, F.S., A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and/or a maximum fine of \$500, plus court costs.

The bill amends s. 252.355, F.S., to update a cross-reference.

The bill provides an effective date of July 1, 2012.

#### B. SECTION DIRECTORY:

Section 1 names the act as the "Dawson and David Caras Act".

Section 2 amends s. 413.08, F.S., relating to rights of an individual with a disability and discrimination in public employment or housing accommodations.

Section 3 creates s. 413.083, F.S., relating to the use of a service animal.

Section 4 amends s. 252.355, F.S., relating to registry of persons with special needs.

Section 5 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct impact on the private sector.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a definition for "trainer" of a service animal. This could potentially allow anyone to claim to be a trainer entitled to the benefits of this legislation. The lack of a definition for "trainer" may also make it difficult to prosecute a person for knowingly and fraudulently misrepresenting himself or herself as a trainer.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2012, the Health and Human Services Access Subcommittee adopted two amendments to House Bill 1077. The amendments do the following:

- Cite the act as the "Dawson and David Caras Act."
- Amend the definition of "individual with a disability" to include an individual who has a psychological or neurological disability.
- Amend the definition of "physically disabled" to include an individual who has a psychological or neurological disability.
- Retain current law relating to the definition of a "service animal".
- Provide that a public accommodation may remove an animal from the premises if the animal fails to remain under the control of the handler or if the animal's behavior is inappropriate, including, but not limited to, growling, excessive barking or biting.
- Remove provisions that require a trainer to be training an animal from an accredited school.
- Remove provisions that would require a trainer to have available on himself or herself inspection credentials from an accredited school in which they were training an animal for.
- Remove provisions requiring that a service animal is wearing appropriate apparel that identifies the animal with an accredited school for which the service animal is being trained.

On January 31, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the service animal provisions from s. 413.08, F.S., and creates s. 413.083, F.S., relating to the use of a service animal. The amendment eliminates the unintended consequence of expanding the definitions of "individual with a disability" and "physically disabled" to ensure that the bill only affects rights and obligations with respect to service animals. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.