

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 Committee on Agriculture

BILL: SB 1128

INTRODUCER: Senator Diaz

SUBJECT: Emotional Support Animals

DATE: March 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>IT</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1128 defines an emotional support animal as an animal that is not required to be trained to assist an individual with a disability. By virtue of its presence, it provides support to alleviate symptoms or effects of an individual's disability.

The bill provides that an individual with a disability who needs an emotional support animal is entitled to full and equal access to all housing accommodations. The bill authorizes a housing accommodation to request certain written documentation prepared by a health care practitioner which verifies that the individual has a disability or a disability-related need, has been under the practitioner's care, and that the emotional support animal is needed. Falsification of written documentation or other misrepresentation regarding the use of an emotional support animal would be a misdemeanor of the second degree.

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)¹ prohibits discrimination against individuals with disabilities² in employment,³ in the provision of public services,⁴ and in public accommodations and businesses.⁵ One of the requirements of the ADA is that public entities and businesses

¹ 42 U.S.C. s. 12101 *et seq.*

² Under the ADA, a disability is broadly defined to mean a physical or mental impairment that substantially limits the major life activities of an individual. 42 U.S.C. s. 12102(1).

³ 42 U.S.C. s. 12112.

⁴ 42 U.S.C. s. 12132.

⁵ 42 U.S.C. s. 12182.

provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.⁶

A “service animal” is defined as a dog that is individually trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.⁷ The work or tasks performed by a service dog must be directly related to the individual’s disability.⁸ Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.⁹

Service dogs must be harnessed or leashed, unless doing so interferes with the dog’s work or the individual’s disability prevents doing so.¹⁰ A person with a disability cannot be asked to remove his or her service dog from the premises, unless it is out of control and the dog’s handler does not take action to control it, or if the dog is not housebroken.¹¹ However, if the dog is removed under such circumstances, the business or public entity must still allow the individual with a disability the opportunity to remain at the business or public entity without the service dog.¹²

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a business or public entity may not ask about the necessity of the service dog. If it is not obvious what service or task the dog is providing, extremely limited questions are allowed: staff may only ask if a service dog is required because of a disability, and what tasks the dog has been trained to perform.¹³ Any other questions, including the nature and extent of the person’s disability or medical documentation, are prohibited.¹⁴

Although the definition of a service animal is limited to dogs, the ADA contains an additional provision related to miniature horses that have been individually trained to work or perform tasks for people with disabilities.¹⁵ Miniatures horses are an alternative to individuals with disabilities who may be allergic to dogs; miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs.¹⁶ Similar to the requirements for service dogs, public entities and public accommodations and businesses must permit the use of a miniature horse by a person with a disability where reasonable. In determining whether permitting a miniature horse is reasonable, a facility must consider four factors: whether the miniature horse is housebroken; whether the miniature horse is under the owner’s control; whether the facility can accommodate

⁶ 28 C.F.R. ss. 36.302(a) and (c)(7) and 35.136(a) and (g).

⁷ 28 C.F.R. ss. 35.104 and 36.104.

⁸ *Id.*

⁹ *Id.*; ADA National Network, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?*, 3 (2014), available at [http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014\(1\).pdf](http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_2014(1).pdf) (Last visited March 6, 2019).

¹⁰ 28 C.F.R. ss. 35.136(d) and 36.302(b)(4).

¹¹ 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

¹² 28 C.F.R. ss. 35.136(c) and 36.302(c)(3).

¹³ 28 C.F.R. ss. 35.136(f) and 36.302(c)(6).

¹⁴ *Id.*

¹⁵ 28 C.F.R. ss. 35.136(i) and 36.302(c)(9). Miniature horses generally range in height from 2 to 3 feet to the shoulders and weigh between 70 and 100 pounds. U.S. Dep’t of Justice, Civil Rights Division, *Service Animals*, 3 (July 2011), available at http://www.ada.gov/service_animals_2010.pdf Last visited March 6, 2019).

¹⁶ U.S. Dep’t. of Justice, *Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 96 (Sept. 15, 2010) available at http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf (Last visited March 6, 2019).

the miniature horse's type, size, and weight; and whether the miniature horse's presence will compromise safety requirements.¹⁷

If a business or public entity violates the ADA, a private party may file suit to obtain a court order to stop the violation. No monetary damages will be available in such suits; however, reasonable attorney's fee may be awarded.¹⁸ Individuals may also file complaints with the U.S. Attorney General who is authorized to bring lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In suits brought by the Attorney General, monetary damages and civil penalties may be awarded. Civil penalties may not exceed \$50,000 for a first violation or \$100,000 for any subsequent violation.¹⁹

Fair Housing Act

The federal Fair Housing Act (FHA)²⁰ prohibits discrimination against a person with a disability in the sale or rental of housing.²¹ Similar to the ADA, the FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.²² However, unlike the ADA, which does not require reasonable accommodations for emotional support animals, accommodation of untrained emotional support animals may be required under the FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.²³ A reasonable accommodation may include waiving a no-pet rule or a pet deposit.²⁴

A landlord may not ask about the existence, nature, and extent of a person's disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation so that the landlord can properly review the accommodation request. They can ask a person to certify, in writing, that the tenant or a member of his or her family is a person with a disability; the need for the animal to assist the person with that specific disability; and that the animal actually assists the person with a disability.²⁵

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and FHA provisions regarding service animals, and while the three are broadly similar, s. 413.08, F.S., contains some significant differences from the ADA and the FHA. Consequently, businesses and public entities in Florida that comply with Florida law may be in violation of the ADA or the FHA.

¹⁷ 28 C.F.R. ss. 35.136(i) and 36.302(c)(9).

¹⁸ 42 U.S.C. ss. 12188 and 2000a-3.

¹⁹ 42 U.S.C. s. 12188.

²⁰ 42 U.S.C. s. 3601 *et seq.*

²¹ 42 U.S.C. s. 3604(f).

²² *Id.*; 24 C.F.R. 5.303.

²³ Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed Reg. 63834, 63836 (Oct. 27, 2008); *see, Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (finding that "the FHA encompasses all types of assistance animals regardless of training . . ."); *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850, 859 (S.D. Ohio 2009).

²⁴ *See* 24 C.F.R. s. 100.204 (Example (1)); *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2011 WL 2945824 (D. Idaho 2011); *Bronk v. Ineichen*, 54 F. 3d 425, 429 (7th Cir. 1995).

²⁵ 73 Fed Reg. 63834.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,²⁶ public employment,²⁷ and housing.²⁸ An “individual with a disability” means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise has a physical impairment that substantially limits one or more major life activities.²⁹ Unlike the ADA and FHA, this definition does not include mental impairment, which includes such mental or psychological disorders as panic disorders or posttraumatic stress disorder. Consequently, s. 413.08, F.S., is narrower in scope than the ADA and FHA.

Under s. 413.08, F.S., an individual with a disability has the right to be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy.³⁰ However, unlike the ADA, s. 413.08, F.S., does not require a public accommodation to provide reasonable accommodations to such individuals.

Section 413.08, F.S., defines “service animal” broadly to mean “an animal that is trained to perform tasks for an individual with a disability,” and does not limit service animals only to dogs as in the ADA.³¹ Additionally, because the definition of “individual with a disability” under s. 413.08, F.S., does not include mental impairment, an animal that is trained to perform work or tasks for an individual with a mental impairment is not considered a service animal under s. 413.08, F.S., as it would be under the ADA. Section 413.08, F.S., also does not provide for the use of miniature horses by individuals with disabilities.

Similar to the ADA, s. 413.08, F.S., provides that documentation that a service animal is trained is not a precondition for providing service, though a public accommodation may ask if an animal is a service animal and what tasks it is trained to perform.³² However, unlike the ADA, s. 413.08, F.S., does not prohibit asking about the nature or extent of an individual’s disability nor does it require the service animal be under the control of its handler and have a harness or leash. Although s. 413.08, F.S., permits a public accommodation to exclude or remove a service animal if its behavior poses a direct threat to the health and safety of others,³³ unlike the ADA it does not specify that a public accommodation may remove a service animal if it is out of control or not housebroken.

Like the FHA, under s. 413.08, F.S., an individual with a disability is entitled to rent or purchase any housing accommodations subject to the same conditions that are applicable to everyone.³⁴ An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for the service

²⁶ Section 413.08(2), F.S. “Public accommodation” means “a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public . . . transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited . . .” Section 413.08(1)(c), F.S.

²⁷ Section 413.08(5), F.S.

²⁸ *Id.* at (6).

²⁹ *Id.* at (1)(b).

³⁰ *Id.* at (3).

³¹ *Id.* at (1)(d).

³² *Id.* at (3)(a).

³³ *Id.* at (3)(e).

³⁴ *Id.* at (6).

animal.³⁵ Unlike the FHA, s. 413.08, F.S., does not provide an individual with a disability who has an emotional support animal with the same housing accommodation rights as an individual with a disability who has a service animal.

Section 413.08, F.S., provides that any person who denies or interferes with the rights of a person with a disability or an individual training a service animal commits a second-degree misdemeanor.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 413.08, F.S., to define the term “emotional support animal.” It expands the rights and responsibilities of an individual with a disability to include using an emotional support animal. The bill outlines those rights and responsibilities as:

- An individual with a disability who has an emotional support animal or obtains an emotional support animal is entitled to full and equal access to all housing accommodations.
- A housing accommodation may not require such individual to pay extra compensation to live with an emotional support animal.
- A housing accommodation is authorized to request certain written documentation prepared by a health care practitioner which verifies that the individual has a disability or a disability-related need, has been under the practitioner’s care, and that the emotional support animal is needed.
- The Department of Health is authorized to adopt rules to administer the provisions of the bill.
- An individual with a disability is liable for certain damage done by her or his emotional support animal.
- Falsification of written documentation or other misrepresentation regarding the use of an emotional support animal is a misdemeanor of the second degree.

Section 2 provides that this act shall take effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁵ *Id.* at (6)(b).

³⁶ A second-degree misdemeanor is punishable by up to 60 days in jail or a fine up to \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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. Statutes Affected:

This bill amends section 413.08 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.