

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 Innovation, Industry, and Technology

BILL: SB 1084

INTRODUCER: Senators Diaz and Montford

SUBJECT: Emotional Support Animals

DATE: February 10, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Becker</u> | <u>Becker</u> | <u>AG</u> | Favorable |
| 2. | <u>Kraemer</u> | <u>Imhof</u> | <u>IT</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1084 prohibits a landlord, to the extent required by federal law, rule, or regulation, to deny housing to a person with a disability or a disability-related need who has an animal that is required as support. It defines emotional support animal as an animal that is not required to be trained to assist a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person’s disability.

The bill prohibits a landlord from charging a person with an emotional support animal additional fees. It does allow a landlord to prohibit the animal if it poses a direct threat to the safety, health, or property of others and to request certain written documentation prepared by a health care practitioner¹ in a format prescribed in rule by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The landlord may also require proof of compliance with state and local licensing and vaccination requirements.

Under the bill, a person who falsifies written documentation or knowingly or willfully misrepresents the use of an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of \$500, or both. The bill requires such person to perform 30 hours of community service for an organization that serves individual with disabilities. It makes an emotional support animal’s owner liable for any damages caused by the animal and removes landlord liability for damage done by an authorized emotional support

¹ Section 456.001(4), F.S., defines the term “health care practitioner” to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

animal. The bill expressly states that the guidelines for emotional support animals do not apply to service animals.

The bill provides an effective date of July 1, 2020.

II. Present Situation:

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)² prohibits discrimination against individuals with disabilities³ in employment,⁴ in the provision of public services,⁵ and in public accommodation.⁶ One of the requirements of the ADA is that public accommodation or public entity provide reasonable accommodations to disabled individuals accompanied by a service animal in all areas that are open to the public.⁷

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.⁸ The work or tasks performed by a service dog must be directly related to the individual’s disability.⁹ Emotional support, comfort, and companionship provided by a dog, even for therapeutic or medical purposes, are insufficient to classify it as a service animal.¹⁰

Service dogs must be harnessed or leashed, unless doing so interferes with the dog’s work or the individual’s disability prevents doing so.¹¹ 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.¹² However, if the dog is removed under such circumstances, the public accommodation or public entity must still allow the individual with a disability the opportunity to remain on the premises of the public accommodation or public entity without the service dog.¹³

Generally, when it is clear that a dog is trained to do work or perform tasks (such as a guide dog), a public accommodation 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

² 42 U.S.C. s. 12101 *et seq.*

³ 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)(a).

⁴ 42 U.S.C. s. 12112.

⁵ 42 U.S.C. s. 12132.

⁶ 42 U.S.C. s. 12182. Under the ADA, a “public entity” includes any state or local government, any department or agency of state or local government, and certain commuter authorities. *See* 42 U.S.C. s. 12131.

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

⁸ 28 C.F.R. ss. 35.104 and 36.104.

⁹ *Id.*

¹⁰ *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 Jan. 28, 2020).

¹¹ 28 C.F.R. ss. 35.136(d) and 36.302(c)(4).

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

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

dog has been trained to perform.¹⁴ Any other questions, including the nature and extent of the person's disability or medical documentation, are prohibited.¹⁵

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.¹⁶ Miniatures horses are an alternative service animal for 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.¹⁷ Similar to the requirements for service dogs, public accommodations and public entities 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 the miniature horse's type, size, and weight; and whether the miniature horse's presence will compromise safety requirements.¹⁸

If a public accommodation 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.¹⁹ Individuals may also file complaints with the U.S. Attorney General, who is authorized to file lawsuits in cases of general public importance or where a "pattern or practice" of discrimination is alleged. In suits 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.²⁰

Fair Housing Act

The federal Fair Housing Act (federal FHA)²¹ prohibits discrimination against a person with a disability in the sale or rental of housing.²² Similar to the ADA, the federal FHA also requires a landlord to provide reasonable accommodations, including permitting the use of service animals, to a person with a disability.²³ 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 federal FHA, if such an accommodation is reasonably

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

¹⁵ *Id.*

¹⁶ 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 Jan. 28, 2020).

¹⁷ 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 Jan. 28, 2020).

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

¹⁹ 42 U.S.C. ss. 12188 and 2000a-3.

²⁰ 42 U.S.C. s. 12188.

²¹ 42 U.S.C. s. 3601 *et seq.*

²² 42 U.S.C. s. 3604(f).

²³ *Id.*; 24 C.F.R. s. 5.303.

necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.²⁴ A reasonable accommodation may include waiving a no-pet rule or a pet deposit.²⁵

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 for proper review of the accommodation request. A landlord may 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.²⁶

The United States Department of Housing and Urban Development (HUD) recently released guidance dated January 28, 2020 clarifying how housing providers can comply with the FHA when assessing a person's request to have an animal as a reasonable accommodation.²⁷

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and federal FHA provisions regarding service animals.

Section 413.08, F.S., provides that an individual with a disability is entitled to equal access in public accommodations,²⁸ public employment,²⁹ and housing.³⁰ An "individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual.³¹

²⁴ 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).

²⁵ 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).

²⁶ 73 Fed. Reg. 63834.

²⁷ See HUD's press release (HUD No. 20-013) relating to the guidance at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013 (last visited Jan. 30, 2020) and HUD's Office of Fair Housing and Equal Opportunity notice (FHEO-2020-01) at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf> (last visited Jan. 30, 2020). In FHEO-2020-01, the two sections of the notice are explained as follows. "The first [section], "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," recommends a set of best practices for complying with the FHA when assessing accommodation requests involving animals to assist housing providers and help them avoid violations of the FHA. The second section to the notice, "Guidance on Documenting an Individual's Need for Assistance Animals in Housing," provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional." *Id.* at p. 2.

²⁸ Section 413.08(1)(c), F.S., defines a "public accommodation" to mean "a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging [. . .]; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers. . . ."

²⁹ Sections 413.08(5) and (7), F.S.

³⁰ Section 413.08(6), F.S.

³¹ Section 413.08(1)(b), F.S.

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.³² Section 413.08, F.S., requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. However, the public accommodation is not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a non-disabled person.

Section 413.08(1)(d), F.S., in part, defines “service animal” to mean “an animal that is trained to perform tasks for an individual with a disability.” Respecting access to or enjoyment of public accommodations, the term “service animal” is limited to mean a dog or miniature horse. The term “service animal” is not limited to a dog or miniature horse in the context of an employment-related accommodation.

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 required because of a disability and what tasks it is trained to perform.³³

Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;³⁴
- May require the service animal to be under the control of its handler and have a harness, leash, or other tether;³⁵
- May not impose a deposit or surcharge on an individual with a disability as a precondition to providing service to one accompanied by a service animal, even if a deposit is routinely required for pets;³⁶
- May hold an individual with a disability liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets;³⁷
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;³⁸ and
- May exclude or remove a service animal from the premises if the animal is out of control and the animal’s handler does not take effective action to control it, the animal is not housebroken, or the animal’s behavior poses a direct threat to the health and safety of others.³⁹

Like the federal 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.⁴⁰ An individual with a disability who has a service animal is entitled to full and equal

³² Sections 413.08(3), F.S.

³³ Sections 413.08(3)(b), F.S.

³⁴ *Id.*

³⁵ Sections 413.08(3)(a), F.S.

³⁶ Sections 413.08(3)(c), F.S.

³⁷ Sections 413.08(3)(d), F.S.

³⁸ Sections 413.08(3)(e), F.S.

³⁹ Sections 413.08(3)(f), F.S., which also provides allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. Further, if a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual access to the public accommodation without the service animal.

⁴⁰ Sections 413.08(6), F.S.

access to all housing accommodations, and may not be required to pay extra compensation for the service animal.⁴¹

Section 413.08(9), 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.⁴²

Emotional Support Animals

According to the United States Department of Housing and Urban Development (HUD),⁴³ an emotional support animal (ESA) is not a pet, but includes any animal providing emotional support to a person with a disability.⁴⁴ Unlike a service animal, an ESA is not trained to work or perform certain tasks, but provides emotional support alleviating one or more symptoms or effects of a person's disability.⁴⁵ The most common type of ESA is a dog; however, other species of animals may be an ESA.

According to HUD, "ESAs provide very private functions for persons with mental and emotional disabilities. Specifically, ESAs by their very nature and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress."⁴⁶

ESAs provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates s. 760.27, F.S., to amend Florida's Fair Housing Act⁴⁸ to prohibit discrimination in the rental of a dwelling to persons with a disability who use an emotional support animal (ESA).

⁴¹ Sections 413.08(6)(b), F.S. Proof of compliance with vaccination requirements may be requested by certain housing accommodations. *Id.*

⁴² Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁴³ HUD is the Federal agency responsible for national policy and programs addressing America's housing needs, improving and developing the nation's communities, and enforcing fair housing laws, including violations of the Fair Housing Act. HUD.GOV, *Questions and Answers about HUD*, <https://www.hud.gov/about/qaintro> (last visited Jan. 28, 2020).

⁴⁴ U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01*, (Apr. 25, 2013), https://archives.hud.gov/news/2013/servanimals_ntcfheo2013-01.pdf (last visited Jan. 28, 2020).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Brazelon Center for Mental Health Law, *Right to Emotional Support Animals in "No Pet" Housing*, (Jun. 16, 2017), <http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf> (last visited Jan. 28, 2020).

⁴⁸ Florida's Fair Housing Act (ss. 760.20 through 760.37, F.S.) is patterned after the federal FHA. *See Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [federal] FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

The bill defines the term:

- “Emotional support animal” as an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person’s disability.
- “Landlord” as the owner or lessor of a dwelling.

Under the bill, a landlord, to the extent required by federal law, rule, or regulation, may not:

- Discriminate in the rental of a dwelling to a person with a disability or a disability-related need for an ESA; and
- Charge additional fees to a person with an ESA.

The bill allows a landlord to:

- Prohibit an ESA if the animal poses a direct threat to the safety, health, or property of others which cannot be reduced or eliminated by another reasonable accommodation;
- Request additional information, prepared by a health care practitioner, regarding each emotional support animal when a person’s disability or disability-related need is not apparent. The requested documentation must verify that the renter has a disability or a disability-related need, has been under the practitioner’s care or treatment for such disability or need, and the animal provides support to alleviate one or more identified symptoms or effects of the person’s disability or disability-related need. If more than one animal is to be kept in the dwelling, the documentation must establish the need for each animal. The documentation must be prepared by a health care practitioner, as defined in s. 456.001, F.S.,⁴⁹ in a format prescribed by the Department of Health. The documentation may not be prepared by a health care practitioner whose exclusive service is to prepare documentation in exchange for a fee. The Department of Health must establish the format a health care practitioner must follow when providing documentation to a patient and must adopt rules relating to the ESA documentation requirements; and
- Require proof of compliance with state and local licensing and vaccination requirements.

A person who falsifies written documentation for an ESA or knowingly or willfully misrepresents being qualified to use an emotional support animal commits a misdemeanor of the second degree, which could result in incarceration for 60 days, a fine of \$500, or both.⁵⁰ The person must also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity or organization at the discretion of the court, to be completed within six months after conviction.

Under the bill, an ESA’s owner is liable for any damages caused by the animal and the landlord is not liable for damage done by an ESA that is authorized as a reasonable accommodation under

⁴⁹ Section 456.001(4), F.S., defines the term “health care practitioner” to include persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

⁵⁰ See, ss. 775.082 and 775.083, F.S., for the penalties applicable to a second degree misdemeanor.

this section, the federal FHA, s. 504 of the Rehabilitation Act of 1973,⁵¹ or any other federal, state, or local law.

The bill expressly provides that the guidelines for ESAs do not apply to service animals.

Section 2 amends s. 413.08, F.S., to make technical and clarifying changes.

Section 3 amends s. 419.001, F.S., to make conform terminology to changes made by the bill. It also replaces a reference to “handicap” with “disability.”

Section 4 amends s. 760.22, F.S., to replace the term “handicap” with the term “disability.”

Section 5 amends s. 760.23, F.S., to replace the term “handicap” with the term “disability.” It also replaces the term “handicapped person” with the term “person with a disability.”

Section 6 amends s. 760.24, F.S., to replace the term “handicap” with the term “disability.”

Section 7 amends s. 760.25, F.S., to replace the term “handicap” with the term “disability.”

Section 8 amends s. 760.29, F.S., to include s. 760.27, F.S., created by the bill, in the list of exemptions under the Fair Housing Act. It also replaces the term “handicap” with the term “disability.”

Section 9 amends s. 760.31, F.S., to replace the term “handicapped” with the term “for persons with disabilities.”

Section 10 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁵¹ Section 504 of the 1973 Rehabilitation Act (Pub. L. 93–112, title V, s. 504) prohibits discrimination against people with disabilities in programs that receive federal financial assistance. This act and subsequent amendments are codified in 29 U.S.C. s. 794, relating to nondiscrimination under federal grants and programs.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If requested by a landlord, a renter of a dwelling who has a disability or a disability-related need who has one or more ESAs may be required pay for written documentation that uses the specified DOH form, prepared by a health care practitioner that has cared for or treated the renter for such disability or need. This may create a barrier to renters who do not have the means to access and be cared for or treated by such a health care practitioner, or to obtain the documentation in the specified DOH format.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1084 provides that a landlord may request additional information regarding each emotional support animal when a person's disability or disability-related need is not apparent. The requested documentation must be issued by a health care practitioner as defined in s. 456.001, F.S., which results in an extensive list of eligible health care practitioners authorized to issue such documentation.

Section 456.001(4), F.S., defines the term "health care practitioner" to include persons licensed or certified under 19 practice acts, which cover persons licensed or certified as an acupuncturist, physician, osteopathic physician, chiropractor, podiatric physician, naturopathic practitioner, optometrist, registered and certified nurse, pharmacist, dentist, dental hygienist, midwife, speech and language pathologist, audiologist, nursing home administrator, occupational therapist, respiratory therapist, dietetics and nutrition practitioner, athletic trainer, orthoptist, prosthetist, electrologist, massage therapist, clinical laboratory scientist and personnel, medical physicist, optician, physical therapist, psychologist, hypnotist, sex therapist, clinical social worker, marriage and family therapist, and mental health counselor.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.08, 419.001, 760.22, 760.23, 760.24, 760.25, 760.29, and 760.31.

This bill creates section 760.27 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
