

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 Rules

BILL: CS/SB 1128

INTRODUCER: Rules Committee and Senator Diaz

SUBJECT: Emotional Support Animals

DATE: April 10, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3.	<u>Akhavein</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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, the animal provides support to alleviate the 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, unless the animal poses a threat to the safety or health of others or poses a threat of physical damage to the property of others. The bill authorizes a housing accommodation to request certain written documentation prepared by a health care practitioner which verifies the individual has a disability or a disability-related need, has been under the practitioner's care, and the emotional support animal is needed.

Under the bill, a person who falsifies written documentation or 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 individuals with disabilities.

The effective date of the bill is July 1, 2019.

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 accommodation or public entity.⁵ 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.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 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.¹²

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 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

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)(a).

³ 42 U.S.C. s. 12112.

⁴ 42 U.S.C. s. 12132.

⁵ 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.

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 19, 2019).

¹⁰ 28 C.F.R. ss. 35.136(d) and 36.302(c)(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.*

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 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.¹⁶ 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.¹⁷

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.¹⁸ 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.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

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 19, 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 19, 2019).

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

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).

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.²⁵

Florida Service Animal Law

Section 413.08, F.S., is Florida's companion to the ADA and 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,²⁶ public employment,²⁷ and housing.²⁸ 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.²⁹

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 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 and what tasks it is trained to perform.³¹ Additionally, a public accommodation:

- May not ask about the nature or extent of a disability;³²

²⁵ 73 Fed Reg. 63834.

²⁶ 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..."

²⁷ Sections 413.08(5) and (7), F.S.

²⁸ Section 413.08(6), F.S.

²⁹ Section 413.08(1)(b), F.S.

³⁰ Sections 413.08(3), F.S.

³¹ Sections 413.08(3)(b), F.S.

³² *Id.*

- May require the service animal to be under the control of its handler and have a harness or leash;³³
- May not impose a deposit or surcharge on an individual with a disability as a precondition, even if a deposit is routinely required for pets;³⁴
- 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;³⁵
- Is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement;³⁶ and
- May exclude 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.³⁷

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.³⁸ 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 animal.³⁹

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.⁴⁰

Emotional Support Animals

According to the United States Department of Housing and Urban Development (HUD),⁴¹ an emotional support animal [ESA] is not a pet, but includes any animal providing emotional support to a person with a disability.⁴² 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.⁴³ The most common type of ESA is a dog; however, other species of animals may be an ESA.

³³ Sections 413.08(3)(a), F.S.

³⁴ Sections 413.08(3)(c), F.S.

³⁵ Sections 413.08(3)(d), F.S.

³⁶ Sections 413.08(3)(e), F.S.

³⁷ Sections 413.08(3)(f), F.S.

³⁸ Sections 413.08(6), F.S.

³⁹ Sections 413.08(6)(b), F.S.

⁴⁰ 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.

⁴¹ 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 Mar. 18, 2019).

⁴² U.S. Department of Housing and Urban Development, *FEHO Notice: FHEO-2013-01*, (Apr. 25, 20013), https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF (last visited Mar. 18, 2019).

⁴³ *Id.*

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;”⁴⁴

Emotional support animals provide therapeutic support to relieve symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.⁴⁵

III. Effect of Proposed Changes:

Section 1 amends s. 413.08, F.S., to expand the rights and responsibilities of an individual with a disability to include use of an emotional support animal.

The bill defines the term “emotional support animal” to mean an animal that does not require training to do specific work or perform special tasks for an individual with a disability, but which provides support to alleviate one or more identified symptoms or effects of an individual’s disability.

The bill outlines those rights and responsibilities as:

- An individual with a disability who has an emotional support animal is entitled to full and equal access to all housing accommodations, unless the animal poses a threat to the safety or health of others or poses a threat of physical damage to the property of others, as is authorized under HUD guidelines and codified at 42 U.S.C. 3604(f)(9).
- 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 the individual has a disability or a disability-related need, has been under the practitioner’s care, and 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.
- A person who falsifies written documentation for an emotional support animal or misrepresents being qualified to use an emotional an emotional support animal commits a misdemeanor of the second degree, and must perform 30 hours of community service for an organization that serves individuals with disabilities.

Section 2 provides an effective date of July 1, 2019.

⁴⁴ *Id.*

⁴⁵ 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 Mar. 18, 2019).

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.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on April 10, 2019:

The committee substitute clarifies circumstances under which housing providers may deny an application for housing with an emotional support animal, as authorized under HUD guidelines and codified at 42 U.S.C. 3604(f)(9).

- B. **Amendments:**

None.