

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 Commerce and Tourism

BILL: CS/SB 1146

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Service Animals

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Fav/CS
2.			CA	
3.			JU	

I. Summary:

CS/SB 1146 amends Florida’s disability rights law related to service animals to align it with similar provisions in the federal Americans with Disabilities Act and the federal Fair Housing Act.

The bill updates the definition of “individual with a disability” to include mental disabilities and limits the definition of “service animal” for the purposes of public accommodations to only dogs and miniature horses trained to assist individuals with psychiatric, intellectual, or other mental disabilities.

The bill requires a business to modify its policies and procedures to accommodate the use of a service animal by a person with a disability. A business may not ask about the nature or extent of an individual’s disability, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform. A service animal must be on a leash or harness, unless the individual’s disability would make it impractical. A business may remove the animal if it is out of control, is not housebroken, or poses a serious threat to others.

The bill also requires that an individual with a disability who has an emotional support animal must have equal access to housing. The bill defines an “emotional support animal” as an animal that provides emotional support to an individual who has a disability-related need for such support. Unless the need for an emotional support or service animal is apparent, a landlord may request medical documentation to verify the disability and need for a service or emotional support animal.

The bill modifies the penalties for any person who interferes with the rights of an individual with a disability or a person training a service animal. In addition to the current second-degree misdemeanor penalty, the bill also requires 30 hours of community service. The bill also makes

it a second-degree misdemeanor to knowingly and willfully misrepresent oneself as using a service animal or as a trainer of a service animal. Punishment for a violation includes 30 hours of community service.

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 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

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.

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 Mar. 26, 2014).

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).

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 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

Federal 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

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 Mar. 26, 2014).

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 Mar. 26, 2014).

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.

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.

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

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.

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).

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 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 conform Florida's disability rights law regarding service animals to the ADA and the FHA.

The bill revises the definition of "individual with a disability" to mean a person with a physical or *mental impairment* that substantially limits one or more major life activities, such as caring for oneself, walking, seeing, speaking, and performing manual tasks. A "physical or mental impairment" is defined to include physiological disorders that affect one or more bodily functions, and *mental or psychological disorders* as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

The definition of "service animal" is revised to include animals trained to work or perform tasks to assist individuals with psychiatric, intellectual, or other mental disabilities. The work or tasks performed by the service animal must be directly related to the disability. The bill includes

³² *Id.* at (3)(a).

³³ *Id.* at (3)(e).

³⁴ *Id.* at (6).

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.

additional examples of work or tasks performed by a service animal, such as reminding an individual with mental illness to take his or her medications and calming an individual with posttraumatic stress disorder during an anxiety attack. The bill specifies that any crime-deterrent effect due to an animal's presence or the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks within the definition of a service animal. Further, for the purposes of provisions related to public accommodations, a service animal is limited to dogs and miniature horses.

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler by a leash or harness, unless doing so interferes with the dog's work or the individual's disability prevents doing so. A public accommodation may remove the animal if it is out of control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill provides that in addition to an individual with a disability who has a service animal, an individual with a disability who has an emotional support animal has equal access to housing accommodations and may not be required to pay extra compensation for housing because of the emotional support animal. The bill defines an "emotional support animal" as an animal that provides emotional support to an individual with a disability who has a disability-related need for such support and that alleviates the symptoms or effects of an individual's disability. Training is not required for an animal to be classified as an "emotional support animal." Unless the need for an emotional support or service animal is apparent, a landlord may request medical documentation from an individual to verify the disability and need for a service or emotional support animal.

The bill provides an additional penalty for any person who interferes with the rights of an individual with a disability or a person training a service animal. In addition to the current second-degree misdemeanor penalty, the bill also requires 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization to be completed within 6 months.

Finally, the bill makes it a second-degree misdemeanor to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal. A violation is punishable by up to 60 days in jail, a fine up to \$500,³⁷ and 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization to be completed within 6 months.

Section 2 provides an effective date of July 1, 2014.

³⁷ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

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:

By aligning Florida law with the ADA and FHA, businesses in Florida that comply with Florida law may no longer be out of compliance with the ADA and FHA with regard to service animals and emotional support animals. The bill also provides greater accessibility to businesses and housing for individuals with disabilities who use service animals and emotional support animals.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, the bill will have an insignificant impact on the workload for the judiciary.³⁸

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds. Additionally, the impact of the bill on the Attorney General or state attorneys has not been determined; however, it may increase caseloads for these agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.08 of the Florida Statutes.

³⁸ Office of the State Courts Administrator, *2014 Judicial Impact Statement: SB 1146* (Mar. 5, 2014).

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Commerce and Tourism Committee on March 31, 2014:

The committee substitute:

- Clarifies the definition of “emotional support animal”;
- Limits service animals to only dogs and miniature horses for the purposes of public accommodations;
- Provides that nothing in the bill limits a person’s rights or remedies under state or federal law; and
- Reduces the time that someone who violates the provisions of the bill has to complete community service from 1 year to 6 months.

B. Amendments:

None.