

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 Fiscal Policy

BILL: CS/SB 414

INTRODUCER: Commerce and Tourism Committee and Senator Altman

SUBJECT: Service Animals

DATE: April 14, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Siples</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2. <u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3. <u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 414 amends s. 413.08, F.S., to revise definitions, clarify the rights of an individual with a disability to use a service animal in public accommodations, and provide penalties for an individual who knowingly misrepresents himself or herself as being qualified to have a service animal in a public accommodation.

This bill has an indeterminate fiscal impact.

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. 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, having a record of such impairment, or being regarded as having such an impairment.

42 U.S.C. 12102(1).

³ 42 U.S.C. 12112.

⁴ 42 U.S.C. 12132.

⁵ 42 U.S.C. 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 individuals with disabilities.¹⁵ Miniature horses are an alternative to individuals with disabilities who may be allergic to dogs or whose religious belief precludes the use of dogs.¹⁶ Additionally, miniature horses also have life spans considerably longer than dogs and are generally stronger than most dogs. Similar to the requirements for service dogs, public entities and public accommodations and businesses must permit the use of a miniature horse by an

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

⁷ 28 C.F.R. 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 4/12/2015).

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. 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 4/12/2015).

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 April 1, 2015).

individual 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, a 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.¹⁹ 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.²⁰

Fair Housing Act

The federal Fair Housing Act (FHA)²¹ prohibits discrimination against a person with a disability in the sale or rental of housing.²² Similar to the ADA, the FHA also requires a property owner to provide reasonable accommodations, including permitting the use of service animals, for 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 FHA if such an accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.²⁴

A property owner may not ask about the existence, nature, or 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 property owner 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

Air Carrier Access Act

The federal Air Carrier Access Act prohibits discrimination, by an air carrier, against an individual with disabilities in the provision of air transportation.²⁶ In air transportation, emotional and psychiatric service animals are also allowable.²⁷ Air carriers are generally required to

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

¹⁸ 42 U.S.C. 12188 and 2000a-3.

¹⁹ 42 U.S.C. 12188(b)(1)(B).

²⁰ 42 U.S.C. 12188(b)(2).

²¹ 42 U.S.C. 3601 *et seq.*

²² 42 U.S.C. 3604(f).

²³ *Id.*; 24 C.F.R. 5.303.

²⁴ 73 Fed Reg. 63834, 63836.

²⁵ *Id.*

²⁶ 49 U.S.C. 41705.

²⁷ 14 C.F.R. 382.117

accommodate service animals; however, an air carrier is not required to accommodate certain unusual service animals, such as snakes, reptiles, and spiders. If the service animal is precluded from traveling in the cabin, the airline must advise the passenger of the reason for the denial and document the denial in writing.²⁸

The Air Carrier Access Act preempts any state law that relates to the price, route, or service of an air carrier governed by its provisions.²⁹

Florida Service Animal Law

Section 413.08, F.S., specifies Florida law regarding service animals, and while it is similar to the ADA and FHA, 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,³⁰ public employment,³¹ and housing.³² 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.³³ Unlike the ADA and FHA, this definition does not include mental impairment. 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.³⁴ 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.³⁵ 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 this section, as it would be under the ADA.

²⁸ *Id.* at (a), (f), and (g). The air carrier must take into account such factors as whether the animal is too large or heavy to be accommodated in the cabin, whether the animal poses a direct threat to the health and safety of others, whether it would cause a significant disruption of cabin service, or whether the service animal would be denied entry to a foreign country that is the flight’s destination.

²⁹ 49 U.S.C. 41713.

³⁰ Section 413.08(2), F.S. Pursuant to s. 413.08(1)(c), F.S., a public accommodation is “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”

³¹ Section 413.08(5), F.S.

³² Section 413.08(6), F.S.

³³ Section 413.08(1)(b), F.S.

³⁴ Section 413.08(3), F.S.

³⁵ Section 413.08(1)(d), F.S.

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 or what tasks it is trained to perform.³⁶ 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 to 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,³⁷ 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.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 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.⁴⁰

III. Effect of Proposed Changes:

The bill amends s. 413.08, F.S., to revise definitions, clarify the rights of an individual with a disability to use a service animal in public accommodations, and provide penalties for an individual who knowingly misrepresents himself or herself as being qualified to have a service animal in a public accommodation. The bill aligns Florida's disability rights law regarding service animals to the ADA and the FHA.

Definitions

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 bill revises the definition of "public accommodations" to include a timeshare that is a transient public lodging establishment, which means it is rented to guests more than three times

³⁶ Section 413.08(3)(a), F.S.

³⁷ Section 413.08(3)(e), F.S.

³⁸ Section 413.08(6), F.S.

³⁹ *Id.* at (6)(b).

⁴⁰ A second degree misdemeanor is punishable by up to 60 days in jail and a fine up to \$500. ss. 775.082(4)(b) and 775.083(1)(e), F.S.

in a calendar year for periods of less than a month, or is held out to the public as a place that regularly rents to guests.⁴¹ The bill specifically excludes air carriers covered by the federal Air Carrier Access Act of 1986 and regulations adopted by the U.S. Department of Transportation from the definition of “public accommodation.”

The definition of “service animal” is revised to include animals trained to work or perform tasks to assist individuals with physical, sensory, 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 examples of work or tasks performed by a service animal, such as alerting an individual to the presence of allergens, providing physical support with balance and stability to an individual with a mobility disability, 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 the provisions related to public accommodations, a service animal is limited to dogs and miniature horses.

Public Accommodations

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 service animal’s work or tasks 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 direct threat to the health and safety of 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 or tasks the animal has been trained to perform.

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 such person to complete 30 hours of community service for an organization that serves individuals with disabilities or other court-determined organization within 6 months of the court’s order.

Housing Accommodations

The bill clarifies that the provisions of s. 413.08(6), F.S., do not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals. Section 413.08(6), F.S., provides that an individual with a disability is entitled to rent or lease housing accommodations, under the same conditions as other individuals.⁴²

⁴¹ Section 509.013(4)(a)1., F.S., defines the term “transient public lodging establishment.”

⁴² This section does not require a person providing the rental property to modify the property to provide a higher degree of care for an individual with a disability than for an individual without a disability.

Misrepresentation of Service Animals

The bill creates 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 and a fine up to \$500,⁴³ 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.

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 may provide greater accessibility to businesses and housing for individuals with disabilities who use service animals and emotional support animals.

Persons in violation of section 413.08, F.S., may be assessed fines, jail time, court costs, and community service. Specifically, the bill creates a second degree misdemeanor to misrepresent that one is qualified to use or train a service animal and current law provides for a second degree misdemeanor for any person who interferes with the rights of an individual with a disability or a person training a service animal related to public accommodations.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. State and local governments may receive additional fines for violations of the provisions of the bill, but this impact will likely be

⁴³ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

insignificant. The judicial system may incur costs related to prosecution and enforcement of the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially 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 Commerce and Tourism on March 30, 2015:

Excludes air carriers governed by the Air Carrier Access Act of 1986 and its regulations from the definition of public accommodations.

- B. **Amendments:**

None.