

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 489  
By: Menéndez (Uresti)  
Veteran Affairs & Military Installations  
5/20/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Recent reports indicate that the increasing number of veterans with disabilities has resulted in a corresponding increase in the number of trained assistance animals. Individuals with post-traumatic stress disorder, seizure disorders, and even diabetes are being provided with specially trained animals, usually dogs, to serve as an early warning for the onset of symptoms and to act as a reminder or "safety net" during illness-specific incidents. There is concern that, despite having received extensive training in socialization and awareness as well as symptom detection, these assistance animals may not have the same access to public places as traditional assistance animals for people with visual impairments or people with specific mobility disabilities only because the animals lack special identification, such as a vest or collar. Interested parties assert that a person with a disability is protected by federal law against a challenge or denial regarding an assistance animal and that public misperception regarding these animals could be mitigated by changes in the law.

The goal of C.S.H.B. 489 is to address and make the public more aware of the rights and responsibilities of persons with disabilities, including with respect to the use of assistance animals.

C.S.H.B. 489 amends current law relating to rights and responsibilities of persons with disabilities, including with respect to the use of service animals that provide assistance to those persons and provides penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 437, Health and Safety Code, by adding Section 437.023, as follows:

Sec. 437.023. SERVICE ANIMALS. (a) Prohibits a food service establishment, retail food store, or other entity regulated under this chapter from denying a service animal admittance into an area of the establishment or store or of the physical space occupied by the entity that is open to customers and is not used to prepare food if the service animal is accompanied and controlled by a person with a disability or the service animal is in training and is accompanied and controlled by an approved trainer.

(b) Authorizes a staff member of a food service establishment, retail food store, or regulated entity, if a service animal is accompanied by a person whose disability is not readily apparent, for purposes of admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under this chapter, to only inquire about whether the service animal is required because the person has a disability and what type of work the service animal is trained to perform.

(c) Defines, in this section, "service animal" to mean a canine that is specially trained or equipped to help a person with a disability. Provides that a canine that provides only comfort or emotional support to a person is not a service animal under this section. Requires that the tasks that a service animal may perform in order to help a person with a disability be directly related to the person's disability and authorizes the tasks to include guiding a person who has a visual impairment; alerting a person who has a hearing impairment or who is deaf; pulling a wheelchair; alerting and protecting a person who has a seizure disorder; reminding a person who has a mental illness to take prescribed medication; and calming a disabled veteran who has post-traumatic stress disorder.

SECTION 2. Amends Sections 121.002(1), (4), and (5), Human Resources Code, to redefine "assistance animal," "person with a disability," and "public facility" for this section.

SECTION 3. Amends Section 121.003, Human Resources Code, by amending Subsections (b), (d), (h), and (i) and adding Subsections (k) and (l), as follows:

(b) Provides that no common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state is authorized to refuse to accept as a passenger a person with a disability because of the person's disability, rather than solely because of the person's disability, nor may a person with a disability be required to pay an additional fare because of his or her use of a service animal, rather than an assistance animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

(d) Provides that the discrimination prohibited by this section includes a refusal to allow a person with a disability to use or be admitted to any public facility, a ruse or subterfuge calculated to prevent or discourage a person with a disability from using or being admitted to a public facility, and a failure to comply with Chapter 469 (Elimination of Architectural Barriers), Government Code, rather than Article 9102, Revised Statutes.

(h) Entitles a person with a total or partial disability who has or obtains a service animal, rather than an assistance animal, to full and equal access to all housing accommodations provided for in this section, and prohibits such person from being required to pay extra compensation or make a deposit for the animal except that the person is liable for damages done to the premises by the animal except for reasonable wear and tear.

(i) Prohibits a service animal in training from being denied admittance to any public facility when accompanied by an approved trainer, rather than prohibiting an assistance animal in training from being denied admittance to any public facility when accompanied by an approved trainer who is an agent of an organization generally recognized by agencies involved in the rehabilitation of persons who are disabled as reputable and competent to provide training for assistance animals, and/or their handlers.

(k) Provides that, except as provided by Subsection (l), a person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability.

(l) Authorizes a staff member or manager of the facility, if a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, to inquire about whether the service animal is required because the person has a disability and what type of work or task the service animal is trained to perform.

SECTION 4. Amends Section 121.004, Human Resources Code, as follows:

Sec. 121.004. PENALTIES FOR AND DAMAGES RESULTING FROM DISCRIMINATION. (a) Provides that a person, including a firm, association, corporation, or other public or private organization, or the agent of the person who violates a provision of Section 121.003 (Discrimination Prohibited) commits an offense,

rather than a person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization who violates a provision of Section 121.003 commits an offense. Provides that an offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than \$300, rather than not less than \$300 or more than \$1,000; and

(2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

(b) Provides that, in addition to the penalty provided in Subsection (a), a person, including a firm, association, corporation, or other public or private organization, or the agent of the person who violates the provisions of Section 121.003 is deemed to have deprived a person with a disability of his or her civil liberties, rather than, in addition to the penalty provided in Subsection (a) of this section, a person, firm, association, corporation, or other organization, or the agent of a person, firm, association, corporation, or other organization, who violates the provisions of Section 121.003 of this chapter is deemed to have deprived a person with a disability of his or her civil liberties. Authorizes the person with a disability deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least \$300, rather than \$100, to the person with a disability.

SECTION 5. Amends Section 121.006(a), Human Resources Code, as follows:

(a) Provides that a person who uses a service animal, rather than an assistance animal, with a harness or leash of the type commonly used by persons with disabilities who use trained animals, in order to represent that his or her animal is a specially trained service animal when training has not in fact been provided, rather than special trained assistance animal when training of the type described in Section 121.002(1)(B) (defining "assistance animal" to mean an animal that is specially trained or equipped to help a person with a disability and that has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide animals with training of this type) of this chapter has not in fact been provided, is guilty of a misdemeanor and on conviction is required to be punished by:

(1) a fine of not more than \$300, rather than \$200; and

(2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

SECTION 6. Amends Section 121.008, Human Resources Code, as follows:

Sec. 121.008. DISSEMINATION OF INFORMATION RELATING TO PERSONS WITH DISABILITIES. (a) Requires, rather than authorizes, the governor, to ensure maximum public awareness of the policies set forth in this chapter, to issue a proclamation each year taking suitable public notice of October 15 as White Cane Safety and Service Animal Recognition Day. Requires that the proclamation contain appropriate comment about the significance of various devices and animals used by persons with disabilities to assist them in traveling, and is required to call to the attention of the public the provisions of this chapter and of other laws relating to the safety and well-being of this state's citizens with disabilities.

(b) Requires the comptroller of public accounts of the State of Texas, the secretary of state, and other state agencies that regularly mail forms or information to significant numbers of public facilities and businesses operating within the state to cooperate with state agencies responsible for the rehabilitation of persons with disabilities by sending information about this chapter to those to whom regular mailings are sent, rather than requires state agencies regularly mailing forms or information to significant numbers of public facilities operating within the state to cooperate with state agencies responsible for the rehabilitation of persons with disabilities by sending information about this chapter to those to whom regular mailings are sent. Authorizes the information, which is required to be sent at the request of state agencies responsible for the rehabilitation of persons with disabilities and at least once each year, rather than not more than once each year, to be included in regular mailings or sent separately. Makes nonsubstantive changes.

SECTION 7. Provides that the changes in law made by this Act to Sections 121.004 and 121.006 (Penalties for Improper Use of Assistance Animals), Human Resources Code, apply only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. Effective date: January 1, 2014.