

BILL ANALYSIS

C.S.H.B. 489
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Defense & Veterans' Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 489 amends the Health and Safety Code to prohibit an entity regulated under statutory provisions relating to food service establishments, retail food stores, mobile food units, and roadside food vendors from denying an assistance 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 assistance animal is accompanied and controlled by a person with a disability or if the assistance animal is in training and is accompanied and controlled by an approved trainer. The bill restricts the authority of a staff member of such an establishment, store, or entity to inquire about an assistance animal, for purposes of admitting an assistance animal that is accompanied by a person whose disability is not readily apparent, to inquiring about whether the assistance animal is required because the person has a disability and about what type of work the assistance animal is trained to perform. The bill defines "assistance animal" to mean an animal that is specially trained or equipped to help a person with a disability, excludes from the definition an animal that provides the person only comfort or emotional support, establishes that the tasks that an assistance animal may perform in order to help a person with a disability must be directly related to the person's disability, and specifies what such tasks may include.

C.S.H.B. 489 amends the Human Resources Code to remove from the definition of "assistance animal" the requirement that the disabled person assisted by the animal has satisfactorily

completed a specific course of training in the use of the animal and 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. The bill redefines "person with a disability" to include a person who has post-traumatic stress disorder, and clarifies that the term includes a person who has an intellectual or developmental disability. The bill redefines "public facility" by specifying that the term includes a retail business, commercial establishment, or office building to which the general public is invited. The bill prohibits the requirement that a person with a total or partial disability who has or obtains an assistance animal make a deposit for the animal in housing accommodations, but establishes that such a person is liable for reasonable wear and tear done to the premises by the animal. The bill, in provisions prohibiting an assistance animal in training from being denied admittance to a public facility when accompanied by an approved trainer, removes the condition that the approved trainer be 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. The bill establishes that a person is not entitled to make demands or inquiries relating to the qualifications or certifications of an assistance animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the assistance animal to a person with a disability. The bill authorizes a staff member or manager of a public facility, for purposes of admitting an assistance animal that is accompanied by a person whose disability is not readily apparent, to inquire about whether the assistance animal is required because the person has a disability and about what type of work or task the assistance animal is trained to perform.

C.S.H.B. 489 changes the penalty for discriminating against a person with a disability from a fine of not less than \$300 or more than \$1,000 to a fine of not more than \$300 and 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. The bill increases the conclusive presumption of damages for a person with a disability deprived of the person's civil liberties from \$100 to \$300. The bill changes the penalty for an offense of using 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 the animal is a specially trained assistance animal when such training has not in fact been provided, from a fine of not more than \$200 to a fine of not more than \$300 and 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.

C.S.H.B. 489 redesignates White Cane Safety Day on October 15 as White Cane Safety and Assistance Animal Recognition Day on that day and requires, rather than authorizes, the governor to issue a proclamation each year taking notice of that day. The bill includes the comptroller of public accounts and the secretary of state among the state agencies required to cooperate with state agencies responsible for the rehabilitation of persons with disabilities by sending information about statutory provisions relating to the rights of persons with disabilities to participate in social and economic activities to those to whom regular mailings are sent and requires such information to be sent at least once each year, rather than not more than once each year.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 489 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 437, Health and Safety Code, is amended by adding Section 437.023 to read as follows:

Sec. 437.023. ASSISTANCE ANIMALS.

(a) A food service establishment, retail food store, or other entity regulated under this chapter may not deny an assistance 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:

(1) the assistance animal is accompanied and controlled by a person with a disability;
or

(2) the assistance animal is in training and is accompanied and controlled by an approved trainer.

(b) If an assistance 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, a staff member of the establishment, store, or entity may only inquire about:

(1) whether the assistance animal is required because the person has a disability;
and

(2) what type of work the assistance animal is trained to perform.

(c) In this section, "assistance animal" means an animal that is specially trained or equipped to help a person with a disability. An animal that provides only comfort or emotional support to a person is not an assistance animal under this section. The tasks that an assistance animal may perform in order to help a person with a disability must be directly related to the person's disability and may include:

(1) guiding a person who has a visual impairment;

(2) alerting a person who has a hearing impairment or who is deaf;

(3) pulling a wheelchair;

(4) alerting and protecting a person who has a seizure disorder;

(5) reminding a person who has a mental illness to take prescribed medication; and

(6) calming a person who has post-traumatic stress disorder.

SECTION 1. Sections 121.002(4) and (5), Human Resources Code, are amended to read as follows:

(4) "Person with a disability" means a person who has a mental or physical disability, including an intellectual disability [~~mental retardation~~], a hearing impairment, deafness, a speech impairment, a visual impairment, post-traumatic stress disorder, or any health impairment that requires special ambulatory devices or services.

(5) "Public facility [~~facilities~~]" includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a retail business, commercial establishment, or office building to which the general public is invited; a college dormitory or other educational facility; a restaurant or other place where food is offered for sale to the public; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

SECTION 2. Section 121.003, Human Resources Code, is amended by adding Subsection (k) to read as follows:

SECTION 2. Sections 121.002(1), (4), and (5), Human Resources Code, are amended to read as follows:

(1) "Assistance animal" means an animal that is specially trained or equipped to help a person with a disability and that [~~is~~ ~~used by a person with a disability~~ ~~who has satisfactorily completed a specific course of training in the use of the animal;~~ and

~~[(B) 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].~~

(4) "Person with a disability" means a person who has:

(A) a mental or physical disability;

(B) an intellectual or developmental disability;

(C) a [~~including mental retardation,~~] hearing impairment;

(D) [~~;~~] deafness;

(E) a [~~;~~] speech impairment;

(F) a [~~;~~] visual impairment;

(G) post-traumatic stress disorder; [~~;~~] or

(H) any health impairment that requires special ambulatory devices or services.

(5) "Public facility [~~facilities~~]" includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a retail business, commercial establishment, or office building to which the general public is invited; a college dormitory or other educational facility; a restaurant or other place where food is offered for sale to the public; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

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

No equivalent provision.

(b) No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person with a disability [~~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 an assistance animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

No equivalent provision.

(d) 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:

- (1) comply with Chapter 469, Government Code [~~Article 9102, Revised Statutes~~];
- (2) make reasonable accommodations in policies, practices, and procedures; or
- (3) provide auxiliary aids and services necessary to allow the full use and enjoyment of the public facility.

No equivalent provision.

(h) A person with a total or partial disability who has or obtains an assistance animal is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation or make a deposit for the animal but is liable for damages done to the premises by the animal except for reasonable wear and tear.

No equivalent provision.

(i) An assistance animal in training shall not be 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) A person is not entitled to make demands or inquiries relating to the qualifications or certifications of an assistance animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the assistance animal to a person with a

(k) ~~Except as provided by Subsection (l), a person is not entitled to make demands or inquiries relating to the qualifications or certifications of an assistance animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the assistance animal~~

disability.

No equivalent provision.

SECTION 3. Section 121.004, Human Resources Code, is amended to read as follows:

Sec. 121.004. PENALTIES FOR AND DAMAGES RESULTING FROM DISCRIMINATION. (a) A person, including a firm, association, corporation, or other public or private organization, or the agent of the [a] person, [~~firm, association, corporation, or other organization~~] who violates a provision of Section 121.003 commits an offense. An offense under this subsection is a **Class B misdemeanor** [~~punishable by a fine of not less than \$300 or more than \$1,000.~~].

(b) In addition to the penalty provided in Subsection (a) [~~of this section~~], a person, including a firm, association, corporation, or other public or private organization, or the agent of the [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. 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 **\$2,000** [~~\$100~~] to the person with a disability.

to a person with a disability.

(1) If a person's disability is not readily apparent, for purposes of admittance to a public facility with an assistance animal, a staff member or manager of the facility may inquire about:

(1) whether the assistance animal is required because the person has a disability; and

(2) what type of work or task the assistance animal is trained to perform.

SECTION 4. Section 121.004, Human Resources Code, is amended to read as follows:

Sec. 121.004. PENALTIES FOR AND DAMAGES RESULTING FROM DISCRIMINATION. (a) A person, including a firm, association, corporation, or other public or private organization, or the agent of the [a] person, [~~firm, association, corporation, or other organization~~] who violates a provision of Section 121.003 commits an offense. An offense under this subsection is a **misdemeanor punishable by:**

(1) a fine of not [~~less than \$300 or~~] more than \$300; 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 [~~\$1,000~~].

(b) In addition to the penalty provided in Subsection (a) [~~of this section~~], a person, including a firm, association, corporation, or other public or private organization, or the agent of the [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. 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** [~~\$100~~] to the person with a disability.

SECTION 4. Section 121.005, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) In response to a reasonable request by a person in a public facility relating to the type of assistance provided by an assistance animal for purposes of admitting the assistance animal to the facility, the person with a disability using the assistance animal shall provide a brief explanation of the basic type of assistance provided by the assistance animal.

SECTION 5. Section 121.006(a), Human Resources Code, is amended to read as follows:

(a) A person who uses 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 assistance animal when training of the type described in Section 121.002(1)(B) ~~[of this chapter]~~ has not in fact been provided, is guilty of a **Class B misdemeanor** ~~[and on conviction shall be punished by a fine of not more than \$200].~~

SECTION 6. Section 121.008, Human Resources Code, is amended.

SECTION 7. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. 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. 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.

No equivalent provision.

SECTION 5. Section 121.006(a), Human Resources Code, is amended to read as follows:

(a) A person who uses 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 assistance animal when training ~~[of the type described in Section 121.002(1)(B) of this chapter]~~ has not in fact been provided, is guilty of a misdemeanor and on conviction shall be punished by:

- (1) a fine of not more than \$300; 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 ~~[\$200].~~

SECTION 6. Same as introduced version.

SECTION 7. The changes in law made by this Act to Sections 121.004 and 121.006, Human Resources Code, apply only to an offense committed on or after the effective date of this Act. 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. 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. This Act takes effect
September 1, 2013.

SECTION 8. This Act takes effect January
1, 2014.