

1-1 By: Menendez (Senate Sponsor - Uresti) H.B. No. 489
 1-2 (In the Senate - Received from the House May 2, 2013;
 1-3 May 3, 2013, read first time and referred to Committee on Health
 1-4 and Human Services; May 17, 2013, rereferred to Committee on
 1-5 Veteran Affairs and Military Installations; May 20, 2013, reported
 1-6 adversely, with favorable Committee Substitute by the following
 1-7 vote: Yeas 4, Nays 0; May 20, 2013, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			

1-15 COMMITTEE SUBSTITUTE FOR H.B. No. 489 By: Rodriguez

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to rights and responsibilities of persons with
 1-19 disabilities, including with respect to the use of service animals
 1-20 that provide assistance to those persons; providing penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 437, Health and Safety Code, is amended
 1-23 by adding Section 437.023 to read as follows:

1-24 Sec. 437.023. SERVICE ANIMALS. (a) A food service
 1-25 establishment, retail food store, or other entity regulated under
 1-26 this chapter may not deny a service animal admittance into an area
 1-27 of the establishment or store or of the physical space occupied by
 1-28 the entity that is open to customers and is not used to prepare food
 1-29 if:

1-30 (1) the service animal is accompanied and controlled
 1-31 by a person with a disability; or

1-32 (2) the service animal is in training and is
 1-33 accompanied and controlled by an approved trainer.

1-34 (b) If a service animal is accompanied by a person whose
 1-35 disability is not readily apparent, for purposes of admittance to a
 1-36 food service establishment, retail food store, or physical space
 1-37 occupied by another entity regulated under this chapter, a staff
 1-38 member of the establishment, store, or entity may only inquire
 1-39 about:

1-40 (1) whether the service animal is required because the
 1-41 person has a disability; and

1-42 (2) what type of work the service animal is trained to
 1-43 perform.

1-44 (c) In this section, "service animal" means an animal that
 1-45 is specially trained or equipped to help a person with a disability.
 1-46 An animal that provides only comfort or emotional support to a
 1-47 person is not a service animal under this section. The tasks that a
 1-48 service animal may perform in order to help a person with a
 1-49 disability must be directly related to the person's disability and
 1-50 may include:

1-51 (1) guiding a person who has a visual impairment;

1-52 (2) alerting a person who has a hearing impairment or
 1-53 who is deaf;

1-54 (3) pulling a wheelchair;

1-55 (4) alerting and protecting a person who has a seizure
 1-56 disorder;

1-57 (5) reminding a person who has a mental illness to take
 1-58 prescribed medication; and

1-59 (6) calming a person who has post-traumatic stress
 1-60 disorder.

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

2-3 (1) "Assistance animal" and "service animal" mean a
2-4 canine [~~means an animal~~] that is specially trained or equipped to
2-5 help a person with a disability and that [+
2-6 [~~(A)~~] is used by a person with a disability [~~who~~
2-7 ~~has satisfactorily completed a specific course of training in the~~
2-8 ~~use of the animal; and~~
2-9 [~~(B) has been trained by an organization~~
2-10 ~~generally recognized by agencies involved in the rehabilitation of~~
2-11 ~~persons with disabilities as reputable and competent to provide~~
2-12 ~~animals with training of this type~~].

2-13 (4) "Person with a disability" means a person who has:
2-14 (A) a mental or physical disability;
2-15 (B) an intellectual or developmental disability;
2-16 (C) a [~~, including mental retardation,~~] hearing
2-17 impairment;
2-18 (D) [~~]~~ deafness;
2-19 (E) a [~~]~~ speech impairment;
2-20 (F) a [~~]~~ visual impairment;
2-21 (G) post-traumatic stress disorder; [~~]~~ or
2-22 (H) any health impairment that requires special
2-23 ambulatory devices or services.

2-24 (5) "Public facility [~~facilities~~]" includes a street,
2-25 highway, sidewalk, walkway, common carrier, airplane, motor
2-26 vehicle, railroad train, motor bus, streetcar, boat, or any other
2-27 public conveyance or mode of transportation; a hotel, motel, or
2-28 other place of lodging; a public building maintained by any unit or
2-29 subdivision of government; a retail business, commercial
2-30 establishment, or office building to which the general public is
2-31 invited; a college dormitory or other educational facility; a
2-32 restaurant or other place where food is offered for sale to the
2-33 public; and any other place of public accommodation, amusement,
2-34 convenience, or resort to which the general public or any
2-35 classification of persons from the general public is regularly,
2-36 normally, or customarily invited.

2-37 SECTION 3. Section 121.003, Human Resources Code, is
2-38 amended by amending Subsections (b), (d), (h), and (i) and adding
2-39 Subsections (k) and (l) to read as follows:

2-40 (b) No common carrier, airplane, railroad train, motor bus,
2-41 streetcar, boat, or other public conveyance or mode of
2-42 transportation operating within the state may refuse to accept as a
2-43 passenger a person with a disability [~~solely~~] because of the
2-44 person's disability, nor may a person with a disability be required
2-45 to pay an additional fare because of his or her use of a service [~~an~~
2-46 ~~assistance~~] animal, wheelchair, crutches, or other device used to
2-47 assist a person with a disability in travel.

2-48 (d) The discrimination prohibited by this section includes
2-49 a refusal to allow a person with a disability to use or be admitted
2-50 to any public facility, a ruse or subterfuge calculated to prevent
2-51 or discourage a person with a disability from using or being
2-52 admitted to a public facility, and a failure to:

2-53 (1) comply with Chapter 469, Government Code [~~Article~~
2-54 ~~9102, Revised Statutes~~];

2-55 (2) make reasonable accommodations in policies,
2-56 practices, and procedures; or

2-57 (3) provide auxiliary aids and services necessary to
2-58 allow the full use and enjoyment of the public facility.

2-59 (h) A person with a total or partial disability who has or
2-60 obtains a service [~~an assistance~~] animal is entitled to full and
2-61 equal access to all housing accommodations provided for in this
2-62 section, and may not be required to pay extra compensation or make a
2-63 deposit for the animal but is liable for damages done to the
2-64 premises by the animal except for reasonable wear and tear.

2-65 (i) A service [~~An assistance~~] animal in training shall not
2-66 be denied admittance to any public facility when accompanied by an
2-67 approved trainer [~~who is an agent of an organization generally~~
2-68 ~~recognized by agencies involved in the rehabilitation of persons~~
2-69 ~~who are disabled as reputable and competent to provide training for~~

3-1 ~~assistance animals, and/or their handlers].~~

3-2 (k) Except as provided by Subsection (l), a person is not
3-3 entitled to make demands or inquiries relating to the
3-4 qualifications or certifications of a service animal for purposes
3-5 of admittance to a public facility except to determine the basic
3-6 type of assistance provided by the service animal to a person with a
3-7 disability.

3-8 (l) If a person's disability is not readily apparent, for
3-9 purposes of admittance to a public facility with a service animal, a
3-10 staff member or manager of the facility may inquire about:

3-11 (1) whether the service animal is required because the
3-12 person has a disability; and

3-13 (2) what type of work or task the service animal is
3-14 trained to perform.

3-15 SECTION 4. Section 121.004, Human Resources Code, is
3-16 amended to read as follows:

3-17 Sec. 121.004. PENALTIES FOR AND DAMAGES RESULTING FROM
3-18 DISCRIMINATION. (a) A person, including a firm, association,
3-19 corporation, or other public or private organization, or the agent
3-20 of the [a] person, ~~[firm, association, corporation, or other~~
3-21 ~~organization]~~ who violates a provision of Section 121.003 commits
3-22 an offense. An offense under this subsection is a misdemeanor
3-23 punishable by:

3-24 (1) a fine of not ~~[less than \$300 or]~~ more than \$300;
3-25 and

3-26 (2) 30 hours of community service to be performed for a
3-27 governmental entity or nonprofit organization that primarily
3-28 serves persons with visual impairments or other disabilities, or
3-29 for another entity or organization at the discretion of the court,
3-30 to be completed in not more than one year [\$1,000].

3-31 (b) In addition to the penalty provided in Subsection (a)
3-32 ~~[of this section],~~ a person, including a firm, association,
3-33 corporation, or other public or private organization, or the agent
3-34 of the [a] person, ~~[firm, association, corporation, or other~~
3-35 ~~organization,~~ who violates the provisions of Section 121.003 ~~[of~~
3-36 ~~this chapter]~~ is deemed to have deprived a person with a disability
3-37 of his or her civil liberties. The person with a disability
3-38 deprived of his or her civil liberties may maintain a cause of
3-39 action for damages in a court of competent jurisdiction, and there
3-40 is a conclusive presumption of damages in the amount of at least
3-41 \$300 ~~[\$100]~~ to the person with a disability.

3-42 SECTION 5. Section 121.006(a), Human Resources Code, is
3-43 amended to read as follows:

3-44 (a) A person who uses a service ~~[an assistance]~~ animal with
3-45 a harness or leash of the type commonly used by persons with
3-46 disabilities who use trained animals, in order to represent that
3-47 his or her animal is a specially trained service ~~[assistance]~~
3-48 animal when training ~~[of the type described in Section~~
3-49 ~~121.002(1)(B) of this chapter]~~ has not in fact been provided, is
3-50 guilty of a misdemeanor and on conviction shall be punished by:

3-51 (1) a fine of not more than \$300; and

3-52 (2) 30 hours of community service to be performed for a
3-53 governmental entity or nonprofit organization that primarily
3-54 serves persons with visual impairments or other disabilities, or
3-55 for another entity or organization at the discretion of the court,
3-56 to be completed in not more than one year [\$200].

3-57 SECTION 6. Section 121.008, Human Resources Code, is
3-58 amended to read as follows:

3-59 Sec. 121.008. DISSEMINATION OF INFORMATION RELATING TO
3-60 PERSONS WITH DISABILITIES. (a) To ensure maximum public awareness
3-61 of the policies set forth in this chapter, the governor shall ~~[may]~~
3-62 issue a proclamation each year taking suitable public notice of
3-63 October 15 as White Cane Safety and Service Animal Recognition Day.
3-64 The proclamation must contain appropriate comment about the
3-65 significance of various devices and animals used by persons with
3-66 disabilities to assist them in traveling, and must call to the
3-67 attention of the public the provisions of this chapter and of other
3-68 laws relating to the safety and well-being of this state's citizens
3-69 with disabilities.

4-1 (b) The comptroller, the secretary of state, and other state
4-2 [State] agencies that regularly mail [mailing] forms or information
4-3 to significant numbers of public facilities and businesses
4-4 operating within the state shall cooperate with state agencies
4-5 responsible for the rehabilitation of persons with disabilities by
4-6 sending information about this chapter to those to whom regular
4-7 mailings are sent. The information, which must be sent at [only on]
4-8 the request of state agencies responsible for the rehabilitation of
4-9 persons with disabilities and at least [not more than] once each
4-10 year, may be included in regular mailings or sent separately. If
4-11 sent separately, the cost of mailing is borne by the state
4-12 rehabilitation agency or agencies requesting the mailing and,
4-13 regardless of whether sent separately or as part of a regular
4-14 mailing, the cost of preparing information about this chapter is
4-15 borne by the state rehabilitation agency or agencies requesting
4-16 distribution of this information.

4-17 SECTION 7. The changes in law made by this Act to Sections
4-18 121.004 and 121.006, Human Resources Code, apply only to an offense
4-19 committed on or after the effective date of this Act. An offense
4-20 committed before the effective date of this Act is governed by the
4-21 law in effect when the offense was committed, and the former law is
4-22 continued in effect for that purpose. For purposes of this section,
4-23 an offense was committed before the effective date of this Act if
4-24 any element of the offense occurred before that date.

4-25 SECTION 8. This Act takes effect January 1, 2014.

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