

HOUSE BILL REPORT

HB 1728

As Reported by House Committee On: Judiciary

Title: An act relating to requiring businesses where food for human consumption is sold or served to allow persons with disabilities to bring their service animals onto the business premises.

Brief Description: Requiring businesses where food for human consumption is sold or served to allow persons with disabilities to bring their service animals onto the business premises.

Sponsors: Representatives Eddy, Rodne, Green, Goodman, Kagi and Kenney.

Brief History:

Committee Activity:

Judiciary: 2/16/11, 2/17/11 [DPS].

Brief Summary of Substitute Bill

- Prohibits food establishments from discriminating against a person on the basis of the use of a "service animal" as defined under current federal regulations (rather than current state laws).

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea, Assistant Ranking Minority Member; Chandler.

Staff: Kelly Pfundheller (786-7289).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under Washington law, "service animal" means any animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

Washington's Law Against Discrimination.

Washington's Law Against Discrimination establishes that it is a civil right to be free from discrimination based on race, color, creed, national origin, sexual orientation, sex, veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. This right applies to: employment; places of public resort, accommodation, or amusement; commerce; and real estate, credit, and insurance transactions.

The prohibition against discriminating in providing public accommodations applies to "any place of public resort, accommodation, assemblage, or amusement" and includes restaurants, hotels, motels, inns, stores, markets, shopping malls, theaters, cinemas, concert halls, arenas, parks, fairs, arcades, libraries, schools, government offices, and hospitals.

The Washington State Human Rights Commission (WSHRC) is responsible, in part, for administering and enforcing the Law Against Discrimination. The WSHRC receives and investigates complaints made by persons alleging unfair practices in violation of this law. If the WSHRC finds that there is reasonable cause to believe that discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If this process fails, the WSHRC must refer the matter to an administrative law judge who may, after a hearing on the matter, issue an order providing relief to the complainant.

Federal Law and Regulations Related to Service Animals.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. Under the United States Department of Justice's regulations implementing the ADA, the term "service animal" contains a different meaning than under Washington law. "Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals. There is an exception for miniature horses, which may be considered service animals in some circumstances.

The ADA requires privately owned businesses that serve the public to allow people with disabilities to bring their service animals into the public areas of the business premises unless the business can demonstrate that making such modifications would fundamentally alter the nature of its goods, services, facilities, privileges, advantages, or accommodations.

Summary of Substitute Bill:

Food establishments are exempt from complying with the law against discrimination related to public accommodations with respect to service animals. "Food establishment" means any place of business that sells or serves food for human consumption and that has a North American Classification System Code in the list provided in the substitute bill, which includes industries in the following areas: supermarkets and other grocery stores, convenience stores, meat markets, fish and seafood markets, fruit and vegetable markets, baked goods stores, confectionery and nut stores, specialty food stores, warehouse clubs and supercenters, full-service restaurants, limited-service restaurants, cafeterias, grill buffets, and buffets, snack and non-alcoholic beverage bars, and drinking places.

Food establishments are prohibited from discriminating on the basis of the use of a service animal by a person with a disability, but only with respect to service animals that fall under the definition of service animal established by current ADA regulations. For the purposes of the antidiscrimination law related to food establishments, "service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Except for miniature horses, other species of animals, whether wild or domestic, trained or untrained, are not service animals. A food establishment must make reasonable modifications in policies, practices, or procedures in accordance with applicable laws in order to permit the use of a miniature horse by an individual with a disability within the food establishment.

Substitute Bill Compared to Original Bill:

The substitute bill does not amend the definition of "service animal" for the purposes of Layla's Law (crimes relating to dog guides and service animals) and all provisions within Washington's Law Against Discrimination. The original bill amended the definition to conform to the current ADA definition in both contexts.

The substitute bill does not create a new crime under Layla's Law. The definition of "public resort, accommodation, assemblage, or amusement" is also removed.

A new section is added to the Washington Law Against Discrimination that applies only to food establishments with respect to service animals, and food establishments are exempt from complying with the public accommodations law with respect to service animals.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Food safety is the paramount concern driving this legislation. People have brought a variety of animal species into stores and restaurants, including ferrets, reptiles, cats, and even full-sized horses. People feel restricted in asking the animal owners to remove the animal from the premises due to current law. If someone says that his or her animal is a service animal, then food establishments are constrained from acting. The supporters of this legislation are not opposed to service animals. Well-trained service animals are not disruptive and act appropriately. If other animals can be trained in the same manner as dogs, like miniature horses, it is not a problem. However, the use of untrained animals creates difficulty when people bring them into businesses where food is served or sold.

(With concerns) The proposed substitute bill mirrors federal law and will provide clear guidance to the food industry. However, the concept of service animals seems to be an exceptionally fertile starting point for urban myths. Some of the stories you have heard are not actually occurring under the current law. The incident with the full-sized horse did not occur in this state, and rumors about snakes do not take into account that those animals are not trained. Current state law only allows trained animals to qualify as service animals. While the bill will help provide clarity to the food industry with respect to which types of animals can be denied access, it may not actually be necessary to change the law.

(Opposed) None.

Persons Testifying: (In support) Representative Eddy, prime sponsor; Carolyn Logue, Washington Food Industry Association; Josh McDonald, Washington Restaurant Association; and Holly Chisa, Northwest Grocery Association.

(With concerns) Toby Olson, Governor's Committee on Disability Issues and Employment; and David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.