

HOUSE BILL REPORT

HB 2822

As Reported by House Committee On:
Judiciary

Title: An act relating to the definition and misrepresentation of service animals.

Brief Description: Concerning service animals.

Sponsors: Representatives Steele, McBride, Muri, Johnson, Caldier, Valdez, Eslick and Gregerson.

Brief History:

Committee Activity:

Judiciary: 1/31/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Adopts the federal definition of service animal.
- Creates a civil infraction for the misrepresentation of a service animal.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall, Shea and Valdez.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert.

Staff: Ingrid Lewis (786-7289).

Background:

Under Washington's Law Against Discrimination (WLAD), it is an unfair practice to discriminate in places of public accommodation on the basis of 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. "Service animal" means any animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability. The prohibition against discrimination in

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places of public accommodation 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. Washington court cases interpreting provisions of the WLAD relating to service animals have held that an animal is not a "service animal" under the WLAD unless the animal has been specifically trained for the purpose of providing assistance to or accommodating a person with a disability.

Under federal law, the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of a person's disability. The ADA applies to covered entities, including state and local government services, public accommodations, commercial facilities, transportation, and telecommunications. The United States Department of Justice's regulations implementing the ADA defines "service animal" to mean 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. Emotional support animals are excluded from the definition of service animal under the ADA.

Summary of Substitute Bill:

"Service animal" in the context of places of public accommodation has the same meaning as it does under the American with Disabilities Act. A service animal is a dog or miniature horse 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.

A person who misrepresents an animal as a service animal commits a civil infraction. An enforcement officer may issue a notice of infraction if a person expressly or impliedly represents that an animal is a service animal in order to secure rights afforded to persons with a disability, and knew or should have known that the animal did not meet the definition of service animal.

If a person's disability or the work performed by the service animal is not readily apparent, an enforcement officer may ask only two questions in order to verify that the animal is a service animal: (1) whether the service animal is required because of a disability; and (2) what work or tasks the service animal has been trained to perform.

Misrepresentation of a service animal carries a penalty of \$500 and a requirement to remove the animal from the place of public accommodation.

Substitute Bill Compared to Original Bill:

The substitute bill makes several changes to the underlying bill. A miniature horse meets the definition of service animal in certain circumstances. The definition of service animal does not apply to housing or real estate provisions of the law against discrimination. The statute

related to food establishments is repealed. Language is added establishing the parameters around service animal inquiries in places of public accommodations. Technical and minor substantive changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony:

(In support) People with disabilities who use service animals experience the damage caused by the misrepresentation of service animals both indirectly, through the backlash and suspicion that businesses have, and directly when their service animals are harassed or attacked by poorly trained or poorly supervised pets. There are some in the disability community who are concerned that animals who do not have the right training or temperament jeopardize the freedoms that service animals currently have. Service animals have over two years of extensive training before being paired with a handler and, once paired, a handler spends time in training with the animal and continues to work with them every day. Service animals are trained to perform tasks to make their handler's life easier, and they are an important member of a handler's family.

Small business owners are struggling to balance the rights of persons legitimately using service animals and individuals in their establishments who are abusing this right and privilege by misrepresenting their animal as a service animal. As the instances of misrepresentation of service animals continues to increase, it becomes more challenging for small businesses to comply with local and state laws and shield themselves from liability if there is an incident in their establishment and protect the rights of individuals who are in need of service animals. Service animals are incredible in not only what they do in terms of tasks, but what they offer to persons with a disability. This bill intends to protect persons who need and use these animals and penalize those who violate the law.

Service animals are not new to the food industry and are welcome in these establishments. They are working dogs. There is a problem with people who bring in pets and pass them off as service animals just to accompany them in a store. Animals like this can cause problems not only for food service employees but for legitimate service animals, customers, and health codes. Behaviors such as barking, biting, and placing the animal on counters would never be allowed with a service animal. Some of the bacteria that animals carry on their paws are serious health and safety hazards. It is the number one complaint the county health departments get from stores.

This is an issue that impacts more than the food industry. Most fairgrounds prohibit pets on their grounds because agricultural fairs all have livestock. Comfort animals that may not be adequately trained pose a safety risk; everyone should have a safe experience at the fair. Technical and community colleges are impacted by the misrepresentation of service animals.

This is a bill that addresses what the schools have been dealing with for a number of years because of a lack of clarity in laws. Colleges have seen a steady increase in the number of animals being represented as service animals on their campuses, including a number of exotic species.

The Office of the Governor has reached out to 40 different organizations that have a significant stake in issues related to service animals, and there was quick consensus from the group on this issues. Twenty other states have attempted to address the issue, and this bill avoids some of the challenges the other states had and offers a better enforcement mechanism.

As a group, places of public accommodation have tried to educate the public and employees on what the laws pertaining to service animals are. Under existing law, places of public accommodation can exclude poorly behaving animals based on that bad behavior, regardless of whether or not they are a trained service animal. This is a win for the disability community by better defining what a service animal is and a win for retailers and customers by providing a safe and enjoyable shopping environment. This bill makes it clear that the disability rights belong with the person with a disability, not the animal. It limits the animals allowed in a public accommodation to the Americans with Disabilities Act definition, which brings consistency that will help with public education. It puts people on notice that simply putting a vest on a dog or other animal does not make that animal a service animal. It is the intention that an enforcement officer can issue a citation. The hope is that an enforcement officer never has to get involved and that the bill will act as a deterrent to individuals passing off pets as service animals.

The proposed substitute bill takes housing out of the underlying bill, which is proper at this time.

(Opposed) None.

Persons Testifying: Representative Steele, prime sponsor; Emily Rogers; Carolyn Logue, Washington Food Industry Association; Nick Akins, Akins Foods; Samantha Louderback, Washington Hospitality Association; Holly Chisa, Northwest Grocery Association; Mark Johnson, Washington Retail Association; Zach Stratton, Fred Meyer, Inc.; Heather Hansen, Washington State Fairs Association; Toby Wilson, Governor's Committee on Disability Issues and Employment; and Ruben Flores, State Board for Community and Technical Colleges.

Persons Signed In To Testify But Not Testifying: None.