

SENATE BILL REPORT

SHB 2822

As Passed Senate, March 2, 2018

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

Brief Description: Concerning service animals.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Steele, McBride, Muri, Johnson, Caldier, Valdez, Eslick and Gregerson).

Brief History: Passed House: 2/08/18, 98-0.

Committee Activity: Law & Justice: 2/15/18, 2/19/18, 2/22/18 [DP].

Floor Activity:

Passed Senate: 3/02/18, 46-2.

Brief Summary of Bill

- Limits the definition of service animal as applied to public accommodations under Washington's Law Against Discrimination (WLAD) to dogs and miniature horses specifically trained to perform tasks related to an individual's disability.
- Retains a requirement for reasonable modifications in a public accommodation to permit the use of a miniature horse as a service animal.
- Authorizes limited inquiry by a public accommodation's staff or investigating officer to determine if a person misrepresents an animal as a service animal.
- Establishes the civil infraction of misrepresenting an animal as a service animal.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Melissa Burke-Cain (786-7755)

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.

Background: Federal and state laws prohibit discrimination against persons with a disability in places of public accommodation. Washington's law against discrimination (WLAD), prohibits discrimination because of the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal.

Service animals under WLAD. Under WLAD, a service animal can be any animal trained to assist or accommodate a disabled person's sensory, mental, or physical disability public accommodations are any place of public resort, accommodation, assemblage, or amusement and includes restaurants, hotels, stores, shopping malls, movie theatres, concert halls, arenas, parks, fairs, arcades, libraries, schools, government offices, and hospitals. Washington courts interpret service animals under WLAD as animals with specific training and includes guide dogs and certain miniature horses. Generally, this law allows service animals to accompany a disabled person in public areas of a facility even though the facility excludes pets.

Service animals under the Americans with Disabilities Act. The ADA also prohibits discrimination based on disability status in public accommodations and commercial facilities (Title III) and state and local government services (Title II). Since 2011, service dogs are the only ADA-recognized service animals under titles II and III. Miniature horses may also be service animals under certain circumstances.

Guidance from the Department of Justice provides that a dog is an ADA-recognized service animal only if it performs specific disability-related tasks during day-to-day activities. Individually trained service dogs typically perform a function that persons cannot perform for themselves, for example, a guide dog for a person who is vision-impaired, or pulling a wheelchair or carrying items for a person who is mobility-impaired. Emotional support, comfort dogs, or pets do not qualify as service animals under Title II and III of the ADA. ADA regulations provide the ADA-covered entities must permit miniature horses as service animals where reasonable. The miniature horse assessment factors are whether:

- the miniature horse is housebroken;
- the miniature horse is under the owner's control;
- the facility can accommodate the miniature horses' type, size, and weight; and
- the miniature horse's presence will not compromise legitimate safety requirements for the facility's safe operation.

The ADA service animal limitation does not apply to assistance animals under the federal Fair Housing Act or the more broadly defined service animals in the Air Carrier Access Act.

Limited inquiries by public accommodation. The ADA allows only limited inquiries if the service the dog provides is not obvious. Only two questions are permitted:

- is the dog a service animal required because of a disability; and
- what work or task has the dog been trained to perform.

The operators of the public accommodation or government facility cannot ask about the person's disability, require medical documentations, a special identification card or training documents or ask that the dog demonstrate its ability to perform the work or task.

Summary of Bill: Service animal has the same meaning as it does under the ADA for places of public accommodation. Service animals are limited to dogs and miniature horses that are

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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: January 1, 2019.

Staff Summary of Public Testimony: PRO: The impetus for this bill came from a constituent. There is a problem with people bringing untrained animals into public places as service animals. They can cause trouble, growl, and bite people and other animals. We need to preserve uninterrupted access to public accommodations for persons who need their service animals in order to access them. This is a serious issue. Recently, I stopped at a supermarket and there was a rabbit in the store as a supposed service animal. Retail businesses often hire loss prevention officers to crack down on crimes committed in the store; primarily theft of goods. When a business has to deal with problems related to misrepresented service animals, the loss prevention officer is taken away from their primary theft-prevention tasks. In the process of checking store incident reports to gather data, I ran across one store that had 17 animals come into the store in one hour. There is significant confusion about what can and cannot be done when there is an animal in a store. This bill will help to clarify the requirements in the law. It will not adversely affect the trained service animals. There is a liability issue for the owner of the public accommodation. Untrained animals cause injuries and lawsuits. The store carries the liability if there is an attack or an incident in the store. This is an important industry bill. Our stores welcome trained service animals and we allow training of service animals in our stores. Recently, a law was passed for food establishments because customer complaints are growing. Some people put service animal vests on animals that are clearly untrained. These vests can be purchased in pet stores or over the internet. The right to have a service animal belongs to the person who has a disability and needs the service animal's assistance. The right does not belong to the animal. Bringing an animal into a business and misrepresenting it as a service animal is the

equivalent of using a handicapped placard by someone who does not have a disability. This has been a problem for many years; a problem for businesses and for persons who have legitimate services animals who may be unfairly mistrusted because of behavior by untrained animals misrepresented as service animals.

Police need to be involved because they are not involved now, and it is not working to solve the problem. If we do not do something now, we will never educate people who do not understand the service dog laws. We already train law enforcement officers about ways to approach a person who may have intellectual or mental health disabilities in order to reduce escalating an encounter. We have to start somewhere and do something. We worry for service dogs that may be attacked and harmed. It is incumbent on those who oppose this bill to come forward with proposed solutions to meet their objections.

When animals are misrepresented as service animals at fairs, it creates a specific concern. Most fairs include livestock shown by 4H clubs, and others. An untrained dog misrepresented as a service animal can cause the cow, horse, pig, or other animal to react and create a risk of injury to a young handler. The handler, or others nearby, may be injured if the animal provokes the livestock.

The proprietor of a public accommodation is in a very difficult position when other patrons complain about an untrained animal masqueraded as a service animal. The business may face liability for excluding an animal or potential liability for violations of health and sanitation laws when other patrons complain. Misrepresentation causes indirect harm because it creates a backlash causing legitimate service animals to be viewed with unfounded suspicion. Misrepresentation causes direct harm because of the risk of injury to service animals by untrained services animals. Twenty other states have laws prohibiting persons from misrepresenting a service animal.

CON: Fake service animals are a problem, but this bill is not a good answer. Many people have an invisible disability. They have a legitimate need and a properly trained service animal, but they are the most likely to be challenged. If a service animal misbehaves it can be expelled from a public place. The effort to deter fake service animals may affect persons who have a psychiatric disability. We oppose the potential for law enforcement involvement because the encounter with police may harm those with psychiatric conditions that are triggered during an incident and may be exacerbated by police involvement. When I am questioned about the service my dog provides, I have already lost my privacy. My dog is trained to recognize my PTSD triggers and interact with me to disrupt their effects. Police involvement is the problem. I am a person with severe PTSD and I have a service animal. I do not look like a person with a disability and my service dog, a Staffordshire terrier, does not look like a typical Labrador retriever guide dog. My service dog was bitten by a dog in a store and the confrontation triggered my PTSD resulting in lost sleep, physical, and emotional distress.

OTHER: If the problem is difficulty with determining if an animal is a legitimate service animal, a system could be set up as an easy way to validate the service animal. I have a disability that is not readily apparent when I am sitting down. I was parked in my car with my handicap placard displayed. A police officer came up along side, rolled down the window, and asked if I had the ID card that validates my placard. I showed it to the officer;

that was all that was needed. A similar system for service animals could identify a legitimate service dog with a single question.

Persons Testifying: PRO: Representative Mike Steele, Prime Sponsor; Jerry Fugich, Veterans Legislative Coalition; Mark Johnson, Washington Retail Association; Diana Stadden, The Arc Of Washington; Holly Chisa, Northwest Grocery Association; Donna Patrick, Developmental Disabilities Council; Toby Olson, Governor's Committee on Disability Issues and Employment; Samantha Louderback, Washington Hospitality Association; Heather Hansen, Washington State Fairs Association; Carolyn Logue, Washington Food Industry Association.

CON: David Lord, Disability Rights Washington; Ayla Taylor, citizen.

OTHER: Cheryl Monk, citizen.

Persons Signed In To Testify But Not Testifying: No one.