

By: Menendez

H.B. No. 489

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Sec. 437.023. SERVICE ANIMALS. (a) A food service establishment, retail food store, or other entity regulated under this chapter may not deny a service 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 service animal is accompanied and controlled by a person with a disability; or

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

(b) If a service 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 service animal is required because the

1 person has a disability; and

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

4 (c) In this section, "service animal" means a canine that is
5 specially trained or equipped to help a person with a disability. A
6 canine that provides only comfort or emotional support to a person
7 is not a service animal under this section. The tasks that a
8 service animal may perform in order to help a person with a
9 disability must be directly related to the person's disability and
10 may include:

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

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

14 (3) pulling a wheelchair;

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

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

19 (6) calming a disabled veteran who has post-traumatic
20 stress disorder.

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

23 (1) "Assistance animal" and "service animal" mean:

24 (A) a canine ~~[means an animal]~~ that is specially
25 trained or equipped to help a person with a disability and that [+
26

26 [~~(A)~~] is used by a person with a disability; or

27 [~~who has satisfactorily completed a specific course of training in~~

1 ~~the use of the animal, and]~~

2 (B) a service dog that is trained or being
3 trained by a person with a certification issued by the National
4 Association for Search and Rescue or another state or nationally
5 recognized search and rescue agency to be a search and rescue dog
6 that assists a law enforcement agency, fire department, or state or
7 nationally recognized search and rescue agency in search and rescue
8 activities ~~[has been trained by an organization generally~~
9 ~~recognized by agencies involved in the rehabilitation of persons~~
10 ~~with disabilities as reputable and competent to provide animals~~
11 ~~with training of this type].~~

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

24 (5) "Public facility ~~[facilities]~~" includes a street,
25 highway, sidewalk, walkway, common carrier, airplane, motor
26 vehicle, railroad train, motor bus, streetcar, boat, or any other
27 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:

(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 a service [~~an assistance~~] animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

(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~~];

1 (2) make reasonable accommodations in policies,
2 practices, and procedures; or

3 (3) provide auxiliary aids and services necessary to
4 allow the full use and enjoyment of the public facility.

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

11 (i) A service ~~[An assistance]~~ animal in training or use
12 shall not be denied admittance to any public facility when
13 accompanied by an approved trainer ~~[who is an agent of an~~
14 ~~organization generally recognized by agencies involved in the~~
15 ~~rehabilitation of persons who are disabled as reputable and~~
16 ~~competent to provide training for assistance animals, and/or their~~
17 ~~handlers]~~.

18 (k) Except as provided by Subsection (l), a person is not
19 entitled to make demands or inquiries relating to the
20 qualifications or certifications of a service animal for purposes
21 of admittance to a public facility except to determine the basic
22 type of assistance provided by the service animal to a person with a
23 disability.

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

27 (1) whether the service animal is required because the

1 person has a disability; and

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

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

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

13 (1) a fine of not [~~less than \$300 or~~] more than \$300;
14 and

15 (2) 30 hours of community service to be performed for a
16 governmental entity or nonprofit organization that primarily
17 serves persons with visual impairments or other disabilities, or
18 for another entity or organization at the discretion of the court,
19 to be completed in not more than one year [~~\$1,000~~].

20 (b) In addition to the penalty provided in Subsection (a)
21 [~~of this section~~], a person, including a firm, association,
22 corporation, or other public or private organization, or the agent
23 of the [a] person, [~~firm, association, corporation, or other~~
24 ~~organization~~], who violates the provisions of Section 121.003 [~~of~~
25 ~~this chapter~~] is deemed to have deprived a person with a disability
26 of his or her civil liberties. The person with a disability
27 deprived of his or her civil liberties may maintain a cause of

1 action for damages in a court of competent jurisdiction, and there
2 is a conclusive presumption of damages in the amount of at least
3 \$300 [~~\$100~~] to the person with a disability.

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

6 (a) A person who uses a service [~~an assistance~~] animal with
7 a harness or leash of the type commonly used by persons with
8 disabilities who use trained animals, in order to represent that
9 his or her animal is a specially trained service [~~assistance~~]
10 animal when training [~~of the type described in Section~~
11 ~~121.002(1)(B) of this chapter~~] has not in fact been provided, is
12 guilty of a misdemeanor and on conviction shall be punished by:

13 (1) a fine of not more than \$300; and

14 (2) 30 hours of community service to be performed for a
15 governmental entity or nonprofit organization that primarily
16 serves persons with visual impairments or other disabilities, or
17 for another entity or organization at the discretion of the court,
18 to be completed in not more than one year [~~\$200~~].

19 SECTION 6. Section 121.008, Human Resources Code, is
20 amended to read as follows:

21 Sec. 121.008. DISSEMINATION OF INFORMATION RELATING TO
22 PERSONS WITH DISABILITIES. (a) To ensure maximum public awareness
23 of the policies set forth in this chapter, the governor shall [~~may~~]
24 issue a proclamation each year taking suitable public notice of
25 October 15 as White Cane Safety and Service Animal Recognition Day.
26 The proclamation must contain appropriate comment about the
27 significance of various devices and animals used by persons with

1 disabilities to assist them in traveling, and must call to the
2 attention of the public the provisions of this chapter and of other
3 laws relating to the safety and well-being of this state's citizens
4 with disabilities.

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

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

1 any element of the offense occurred before that date.

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