

By: Menendez

H. B. No. 489

A BILL TO BE ENTITLED

# 1 AN ACT

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

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

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

8                   Sec. 437.023. SERVICE ANIMALS.       (a) A food service  
9 establishment, retail food store, or other entity regulated under  
10 this chapter may not deny a service animal admittance into an area  
11 of the establishment or store or of the physical space occupied by  
12 the entity that is open to customers and is not used to prepare food  
13 if:

18                   (b) If a service animal is accompanied by a person whose  
19 disability is not readily apparent, for purposes of admittance to a  
20 food service establishment, retail food store, or physical space  
21 occupied by another entity regulated under this chapter, a staff  
22 member of the establishment, store, or entity may only inquire  
23 about:

24 (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                   [(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

1 other place of lodging; a public building maintained by any unit or  
2 subdivision of government; a retail business, commercial  
3 establishment, or office building to which the general public is  
4 invited; a college dormitory or other educational facility; a  
5 restaurant or other place where food is offered for sale to the  
6 public; and any other place of public accommodation, amusement,  
7 convenience, or resort to which the general public or any  
8 classification of persons from the general public is regularly,  
9 normally, or customarily invited.

10 SECTION 3. Section 121.003, Human Resources Code, is  
11 amended by amending Subsections (b), (d), (h), and (i) and adding  
12 Subsections (k) and (l) to read as follows:

13 (b) No common carrier, airplane, railroad train, motor bus,  
14 streetcar, boat, or other public conveyance or mode of  
15 transportation operating within the state may refuse to accept as a  
16 passenger a person with a disability [~~solely~~] because of the  
17 person's disability, nor may a person with a disability be required  
18 to pay an additional fare because of his or her use of a service [~~an~~  
19 ~~assistance~~] animal, wheelchair, crutches, or other device used to  
20 assist a person with a disability in travel.

21 (d) The discrimination prohibited by this section includes  
22 a refusal to allow a person with a disability to use or be admitted  
23 to any public facility, a ruse or subterfuge calculated to prevent  
24 or discourage a person with a disability from using or being  
25 admitted to a public facility, and a failure to:

26 (1) comply with Chapter 469, Government Code [~~Article~~  
27 ~~9102, Revised Statutes~~];

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           (1) 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:

(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

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1 any element of the offense occurred before that date.

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