



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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132nd General Assembly
(As Introduced)

Reps. Lipps and Kelly, Ingram, LaTourette, K. Smith, Dean, Brenner, Lepore-Hagan, Kent, Boggs, Sweeney, Miller, Schaffer, Holmes, Carfagna, Fedor, Dever

BILL SUMMARY

- Revises the law governing the use of a service animal in a place of public accommodation so that it is consistent with the federal Americans with Disabilities Act (ADA).
- Accordingly, allows only a dog or a miniature horse to be used as a service animal by a disabled individual in a place of public accommodation, rather than *any* animal as is currently authorized by rules of the Ohio Civil Rights Commission.
- Supersedes existing Commission rules governing service animals, and prohibits the Commission from adopting or enforcing rules governing the use of a service animal or other assistance animal at a place of public accommodation.
- Requires the Commission to enforce the bill's revised requirements governing service animals.
- Prohibits a person from falsely claiming that an animal is a service animal in order for the animal to gain access to a place of public accommodation.
- Repeals a provision in the Dog Law that governs the use of service dogs that is inconsistent with the bill's requirements.

CONTENT AND OPERATION

Overview

The bill revises the law governing the use of a service animal in a place of public accommodation¹ so that it is consistent with the federal Americans with Disabilities Act (ADA). Accordingly, an individual with a disability may only bring a dog or a miniature horse in a place of public accommodation. Under current Ohio Civil Rights Commission rules, an individual with a disability may bring into a place of public accommodation any type of animal that aids the individual. For example, a person may bring a monkey that collects or retrieves items for a person whose mobility is impaired into a place of public accommodation.² This use of a monkey would not be allowed in a place of public accommodation under the bill.

The bill supersedes the Commission's rules.³ Thus, consistent with the ADA, in a place of public accommodation, the bill provides legal protection only for an individual with a disability who uses a dog or miniature horse, both of which must be individually trained for the benefit of the individual to do work or perform tasks that are directly related to the individual's disability.⁴

The Commission is tasked with enforcing the bill's requirements, but it is prohibited from adopting or enforcing any rules governing service animals.⁵ Additionally, the bill creates a new criminal offense that prohibits a person from falsely claiming that an animal is a service animal in order for the animal to gain access to a place of public accommodation.⁶ Finally, the bill removes duplicative and conflicting provisions of law in both the Ohio Civil Rights Commission Law and the Ohio Dog Law.

¹ A place of public accommodation is an inn, restaurant, eating house, barbershop public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement of which the accommodations, advantages, facilities, or privileges, are available to the public. R.C. 4112.01(A)(9).

² O.A.C. 4112-5-02(C).

³ Section 3.

⁴ R.C. 4112.01(A)(24) and R.C. 4112.025(J).

⁵ R.C. 4112.04(A)(4).

⁶ There is no corresponding prohibition under the ADA.



Inconsistent terminology in current law

Though the term "service animal" is used in federal law, current Ohio law uses different terminology. The bill standardizes the term "service animal" in state law in a manner consistent with federal law. Current federal and state terms are as follows:

- Federal law uses the term "service animal," which includes a dog or a miniature horse used for service.⁷
- Ohio's Dog Law uses the term "assistance dog," which includes a dog used for certain types of service.⁸
- Ohio Civil Rights Commission rules on discrimination uses the term "animal assistant," which includes any type of animal used for service.⁹

Current Ohio Civil Rights Commission service animal rules

Under current Ohio Civil Rights Commission rules, which the bill renders null and void, it is unlawful discrimination for a facility that is a place of public accommodation to deny a disabled person the attendance of an animal assistant or require the disabled person to pay an extra charge for the attendance of the animal assistant.¹⁰ Whoever violates this provision is subject to a civil action for damages, injunctive relief, or any other appropriate relief.¹¹

Under Commission rules, an animal assistant is *any* animal that aids the disabled.¹² A disabled person is:

(1) A person who has a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment; or

⁷ Title III of the federal Americans with Disabilities Act. For the full law regarding places of public accommodation, see: https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.pdf.

⁸ R.C. Chapter 955.

⁹ OAC Chapter 4112-5.

¹⁰ O.A.C. 4112-5-06(A)(4).

¹¹ R.C. 4112.99.

¹² O.A.C. 4112-5-02(C).



(2) Any person who has had one or more of those disabilities, who no longer has any functional limitation, but who is treated by a respondent as having such a disability, or any person who is regarded as disabled by a respondent.¹³

The bill retains the definition as described in (1) above.¹⁴

New service animal law

The bill establishes requirements that are consistent with the ADA governing the use of service animals in places of public accommodation. In doing so, the bill prohibits a place of public accommodation from excluding the use of a service animal by a disabled individual. However, a place of public accommodation may exclude an animal if it is out of control, and the individual or the animal's handler does not take effective action to control it. Further, an animal may be excluded if it is not housebroken.¹⁵ A place of public accommodation that unlawfully prohibits the use of a service animal by a disabled individual is strictly liable and guilty of a second degree misdemeanor. All other violations of the bill's prohibitions are subject to a civil action for damages, injunctive relief, or any other appropriate relief.¹⁶

The bill adds the acts that are prohibited under the bill to the term "unlawful discriminatory practice" in the Ohio Civil Rights Commission Law, thus affording individuals who are discriminated against under the bill's prohibitions a civil claim for damages, injunctive relief, or any other appropriate relief.¹⁷

What is a service animal?

As stated above, for purposes of the bill, a service animal is a dog that is individually trained for the benefit of a disabled individual to do work or perform tasks that are directly related to the individual's disability. A service animal does not include any species of animal other than a dog, whether wild or domestic, trained or untrained.¹⁸ The bill, consistent with the federal ADA law, also allows a disabled person to use a miniature horse in a place of public accommodation. The bill requires places of public accommodation to make reasonable modifications in policies, practices, or

¹³ O.A.C. 4112-5-02(H).

¹⁴ R.C. 4112.01(A)(13), the term in the bill is "disability."

¹⁵ R.C. 4112.025(A) and (B).

¹⁶ R.C. 4112.99.

¹⁷ R.C. 4112.01(A)(8) and 4112.051, not in the bill.

¹⁸ R.C. 4112.01(A)(24).



procedures to permit the use of a miniature horse by a disabled individual if the miniature horse has been trained to do work or perform tasks for the benefit of the disabled individual.¹⁹

In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a place of public accommodation must consider all of the following:

- (1) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- (2) Whether the handler has sufficient control of the miniature horse;
- (3) Whether the miniature horse is housebroken; and
- (4) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.²⁰

A miniature horse as described above is covered under the bill's provisions.²¹

Controlling a service animal

A disabled individual or a handler must keep a service animal under control. The individual or handler must use a harness, leash, or other tether for the service animal, unless either of the following applies:

- (1) The individual or handler is unable to use a harness, leash, or other tether because of the individual's disability; or
- (2) The use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks.

If either (1) or (2) apply, the individual or handler must otherwise keep the service animal under control. A place of public accommodation is not responsible for the care or supervision of a service animal.²²

¹⁹ R.C. 4112.025(J)(1).

²⁰ R.C. 4112.025(J)(2).

²¹ R.C. 4112.025(K).

²² R.C. 4112.025(D).



If a place of public accommodation properly excludes a service animal because the animal is out of control and the individual or the animal's handler does not take effective action to control it or the animal is not housebroken, the place of public accommodation must give the disabled individual the opportunity to participate in the services, programs, or activities offered by the place of public accommodation without having the service animal on the premises.²³

Questions allowed to be asked to a disabled person

Under the bill, a place of public accommodation cannot ask about the nature or extent of a person's disability, but may ask both of the following questions to determine if an animal qualifies as a service animal:

- (1) Is the animal required because of a disability?
- (2) What work or task has the animal been trained to perform?

However, a place of public accommodation cannot require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Furthermore, a place of public accommodation cannot ask those two questions when it is readily apparent that an animal is trained to do work or perform tasks for a disabled individual.²⁴

Access to facilities at no cost

A service animal may accompany an individual with a disability in all areas of a place of public accommodation's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. A place of public accommodation cannot ask or require a disabled individual to pay a surcharge, even if people accompanied by pets are required to pay fees or to comply with other requirements generally not applicable to people without pets. However, if a place of public accommodation normally charges individuals for the damage they cause, the place of public accommodation may charge a disabled individual for damage caused by the individual's service animal.²⁵

²³ R.C. 4112.025(C).

²⁴ R.C. 4112.025(E).

²⁵ R.C. 4112.025(F) and (G).



Service animals and housing

A disabled individual who has a service animal is entitled to keep the service animal on a premises purchased, leased, rented, assigned, or subleased by the individual. The individual is not required to pay any extra charge for the service animal, but is liable for damage done by the service animal to the premises.²⁶

Falsely claiming that an animal is a service animal

The bill adds a new prohibition that is not in the ADA. Specifically, a person cannot falsely claim that an animal is a service animal in order for the animal to gain access to a place of public accommodation.²⁷ Negligent violation of this new prohibition is a second degree misdemeanor.²⁸

Remedy for an individual that is discriminated against

The bill allows any person to file a charge with the Ohio Civil Rights Commission alleging that another person has engaged in or is engaging in an unlawful discriminatory practice in violation of the bill's provisions governing service animals. If a person wishes to file a charge with the Commission alleging that another person is engaging in an unlawful discriminatory practice prohibited under the bill's provisions, the charge must be in writing, under oath, and filed with the Commission within six months after the alleged unlawful discriminatory practice was committed.

After receiving a charge, the Commission may initiate a preliminary investigation to determine whether it is probable that an unlawful discriminatory practice has been or is being engaged in. The Commission also may conduct, on its own initiative and independent of the filing of any charges, a preliminary investigation relating to any of the unlawful discriminatory practices described under the bill's provisions.²⁹

Ohio Dog Law

The bill repeals provisions in the Dog Law that prohibit places of public accommodation from denying specified types of service dogs access to those places,³⁰

²⁶ R.C. 4112.025(H).

²⁷ R.C. 4112.025(I).

²⁸ R.C. 4112.99(C).

²⁹ R.C. 4112.05(B).

³⁰ R.C. 955.43.



the penalty for which is a fourth degree misdemeanor.³¹ These provisions are somewhat inconsistent with the requirements established in the ADA. Currently, a person is prohibited from depriving a blind, deaf, hearing impaired, or mobility impaired person or a trainer of an assistance dog who is accompanied by an assistance dog any of the advantages, facilities, or privileges of all public conveyances, hotels, lodging places, places of public accommodation, amusement, or resort, institutions of education, and other places to which the general public is invited.³²

Certain limitations do apply when a disabled person is accompanied by an assistance dog in public. Specifically, the following limitations apply:

- (1) The dog cannot occupy a seat in any public conveyance;
- (2) The dog must be on a leash while using the facilities of a common carrier; and
- (3) Any dog in training to become an assistance dog must be covered by a liability insurance policy provided by a nonprofit special agency engaged in dog training protecting members of the public against personal injury or property damage caused by the dog.³³

These provisions, however, only apply to an assistance dog (not any other type of animal assistant as defined in the Ohio Civil Rights Commission rules). These provisions differ from federal law and the Ohio Civil Rights Commission rules because they limit the type of disability the person must have in order to gain access to the public place. However, under current law, a person who has a disability other than being blind, deaf, hearing impaired, or mobility impaired can still seek remedy under the ADA and under the applicable Ohio Civil Rights Commission rules.

HISTORY

ACTION	DATE
Introduced	07-05-17

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³¹ R.C. 955.99(D).

³² R.C. 955.43(B).

³³ R.C. 955.43(A).

