

- SUBJECT:** Use of assistance animals in public places
- COMMITTEE:** Defense and Veterans' Affairs — committee substituted recommended
- VOTE:** 6 ayes — Menéndez, R. Sheffield, Collier, Farias, Miller, Moody
3 nays — Frank, Schaefer, Zedler
- WITNESSES:** For — Carol Anderson; Brian East, Disability Rights Texas; Adan Gallegos; (*Registered, but did not testify*: James Cunningham, Texas Coalition of Veterans Organizations and Military Officers Association of America; Deborah Giles; James Grayson; Carlos Higgins, Austin Military Officers Association; Patrick Hogan; Philip Lindner, National Guard Association of Texas; Morgan Little, Texas Coalition of Veterans Organizations; CarrieAnn Partch)

Against — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Businesses; Mike Hull, Texans for Lawsuit Reform)

On — Glen Garey, Texas Restaurant Association
- BACKGROUND:** Human Resources Code, sec. 121.002 defines an assistance animal as an animal specially trained or equipped to help a person with a disability and used by a person who has satisfactorily completed a specific and approved training course. Chapter 121 also defines a public facility and stipulates the kinds of mental and physical disabilities that qualify someone as a person with a disability.

Penalties for anyone who discriminates against a person with a disability and for anyone who falsely uses an animal for assistance are included in ch. 121.

Health and Safety Code, ch. 437 governs the regulation of restaurants, retail food stores, mobile food units, and roadside food vendors.
- DIGEST:** Under CSHB 489, restaurants, retail food stores, and other food establishments and vendors could not deny in certain circumstances an assistance animal entry into an area of the establishment that was open to

customers and was not used to prepare food. The assistance animal would have to be accompanied and controlled by a person with a disability or in training and controlled by an approved trainer.

If the assistance animal were accompanied by a person whose disability was not readily apparent, a staff member of the establishment could inquire only about whether the assistance animal was required because the person had a disability and what type of work the animal was trained to perform.

The bill would remove specific training requirements and add post-traumatic stress disorder and intellectual or developmental disability to the conditions that would qualify a person as having a disability.

The bill would amend the Health and Safety Code and define an assistance animal as providing help with specific tasks directly related to a person's disability, which could include:

- guiding a person who had a visual impairment;
- alerting a person who had a hearing impairment or was deaf;
- pulling a wheelchair;
- alerting and protecting a person who had a seizure disorder;
- reminding a person who had a mental illness to take prescribed medication; and
- calming a person who had post-traumatic stress disorder.

CSHB 489 would cap the fine for discriminating against a person with a disability at \$300 and add 30 hours of community service as part of the penalty for the misdemeanor offense. It would raise the fine to not more than \$300 from not more than \$200 for someone who falsely presented an animal as an assistance animal and would add 30 hours of community service to the penalty for the misdemeanor offense. The penalties for discriminating against a person with a disability who had an assistance animal and for anyone who falsely represented that they had an assistance animal would apply only to an offense committed on or after January 1, 2014.

The bill increases the presumption of damages for a person with a disability deprived of their civil liberties to \$300 from \$100.

The governor would proclaim October 15 of each year as White Cane Safety and Assistance Animal Recognition Day. It would specify the

comptroller and the secretary of state among the state agencies that had to inform the public through mail at least once a year about the policies related to persons with disabilities.

The bill would take effect January 1, 2014.

**SUPPORTERS
SAY:**

CSHB 489 would update and provide uniformity and clarity in the Human Resources and Health and Safety codes as they relate to assistance dogs used by people with disabilities. The bill would help eliminate ambiguity in the law and increase awareness about additional disabilities and the use of assistance animals.

Many people with disabilities such as post-traumatic stress disorder or an intellectual disability who use assistance animals are denied the same legal protections afforded to other people with disabilities. Addressing this problem is important as two recent wars have yielded a wave of veterans who grapple with disabilities that often are not fully apparent or appreciated by the public. The bill also would establish reasonable provisions that defined an acceptable inquiry about a person's disability when the person had an assistance animal.

Texas does not provide protection for a vast number of people with disabilities who use service animals in eateries, food stores, and other areas of public spaces where food is not prepared. The bill would establish some penalties for violators, but they would not be harsh and would include community service that would benefit an organization that served people with disabilities. The bill also would raise the threshold for the presumption of damages for someone who was deprived of his or her civil liberties. This stipulation would address a concern about the bill prompting frivolous lawsuits. CSHB 489 would penalize people who represented that they had a disability and a qualified assistance animal, helping to prevent people from taking advantage of the rights afforded to those who do have a disability. The bill would spell out guidelines for inquiries about assistance animals and require the governor and state agencies to inform the public about its provisions. The requirements on businesses, employees, or anyone else would not be onerous.

**OPPONENTS
SAY:**

CSHB 489 would unfairly penalize many business owners and their employees who would simply try to verify that an animal was being used to assist a person with a disability. The bill would not provide leeway for businesses and employees to make a fair inquiry about the animal and

would rush to penalize anyone not careful enough to adhere to these heightened restrictions. The provisions in the bill would require an impractical amount of training that businesses cannot afford.

In addition, the bill is not needed because a person may seek recourse for civil rights discrimination in a court of law.

NOTES:

The committee substitute differs from the bill as filed by:

- adding to the Health and Safety Code guidelines for inquiries of people with disabilities who are using assistance animals and definitions of assistance animals;
- adding to the Human Resources Code the definition of an assistance animals;
- adding developmental disability to the list of disabilities in the Human Resources Code;
- deleting certain requirements of a trainer of an assistance animal;
- stipulating the threshold of presumed damages would be \$300 in order for a person with a disability deprived of their civil liberties to seek a cause of action in court; and
- establishing new penalties for anyone who falsely claimed to have an assistance animal for a disability;