

Senator Scott D. McCoy proposes the following substitute bill:

EMOTIONAL SUPPORT ANIMALS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends provisions related to emotional support animals.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a person with a disability accompanied by a support animal by:
 - amending the definition of support animal;
 - creating a new section specific to persons with a disability accompanied by an emotional support animal;
 - restating that misrepresenting a support or emotional support animal is a class B misdemeanor; and
 - including emotional support animals in penalties for injuries to support animals.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **18-1-3**, as last amended by Laws of Utah 2007, Chapter 22
- 27 **62A-5b-102**, as enacted by Laws of Utah 2007, Chapter 22
- 28 **62A-5b-106**, as renumbered and amended by Laws of Utah 2007, Chapter 22
- 29 **76-9-307**, as last amended by Laws of Utah 2007, Chapter 22
- 30 **78B-3-701**, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 ENACTS:

- 32 **62A-5b-201**, Utah Code Annotated 1953
- 33 **62A-5b-202**, Utah Code Annotated 1953
- 34 **62A-5b-203**, Utah Code Annotated 1953
- 35 **62A-5b-204**, Utah Code Annotated 1953



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **18-1-3** is amended to read:

39 **18-1-3. Dogs attacking domestic animals, service animals, hoofed protected**
40 **wildlife, or domestic fowls.**

41 Any person may injure or kill a dog while:

42 (1) the dog is attacking, chasing, or worrying:

43 (a) a domestic animal having a commercial value;

44 (b) a service animal, as defined in Section 62A-5b-102; ~~[or]~~

45 (c) an emotional support animal as defined in Section 62A-5b-201; or

46 ~~[(c)]~~ (d) any species of hoofed protected wildlife;

47 (2) the dog is attacking domestic fowls; or

48 (3) the dog is being pursued for committing an act described in Subsection (1) or (2).

49 Section 2. Section **62A-5b-102** is amended to read:

50 **Part 1. Rights and privileges of a person with a disability - Service animals**

51 **62A-5b-102. Definitions.**

52 As used in this chapter:

53 (1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the Americans
54 With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the
55 Code of Federal Regulations, as may be amended in the future.

56 ~~[(2) "Emotional support animal":]~~

57 ~~[(a) means an animal in the possession of a person:]~~

58 ~~[(i) with a disability; and]~~

59 ~~[(ii) with specific documentation from a mental health therapist that the animal is~~
60 ~~needed in a particular location described in Section 62A-5b-103, other than a restaurant, by the~~
61 ~~person to address a mental health condition; and]~~

62 ~~[(b) does not include an animal in the possession of a person with a disability in any~~
63 ~~other location than the particular location described in Subsection (2)(a)(ii).]~~

64 ~~[(3)]~~ (2) "Mental health therapist" has the same meaning as defined in Title 58, Chapter
65 60, Mental Health Professional Practice Act.

66 ~~[(4)]~~ (3) "Mental health therapy" has the same meaning as defined in Title 58, Chapter
67 60, Mental Health Professional Practice Act.

68 ~~[(5)]~~ (4) "Psychiatric therapy animal" means an animal:

69 (a) specifically trained for use by a mental health therapist in the course of providing
70 mental health therapy to a person with a disability; and

71 (b) in the possession of a mental health therapist.

72 ~~[(6) "Restaurant":]~~

73 ~~[(a) includes any coffee shop, cafeteria, luncheonette, soda fountain, dining room, or~~
74 ~~fast-food service where food is prepared or served for immediate consumption; and]~~

75 ~~[(b) does not include:]~~

76 ~~[(i) any retail establishment whose primary business or function is the sale of fuel or~~
77 ~~food items for off-premise, but not immediate, consumption; and]~~

78 ~~[(ii) except for a dinner theater, a theater that sells food items:]~~

79 ~~[(7)]~~ (5) "Service animal" means:

80 (a) (i) a guide dog;

81 (ii) a signal dog; or

82 (iii) any other animal individually trained to do work or perform tasks for the benefit of
83 a person with a disability, including:

84 (A) guiding a person with impaired vision;

85 (B) alerting a person with impaired hearing to intruders or sounds;

86 (C) providing minimal protection or rescue work;

87 (D) pulling a wheelchair; or

88 (E) fetching dropped items; or
 89 [~~(b) an emotional support animal; or~~]
 90 [~~(c)~~] (b) an animal in training to become an animal described in Subsection [~~(7)~~] (5)(a)
 91 [~~or (b)~~].

92 Section 3. Section **62A-5b-106** is amended to read:

93 **62A-5b-106. Interference with rights provided in this chapter --**
 94 **Misrepresentation of rights under this chapter.**

95 (1) Any person, or agent of any person, who denies or interferes with the rights
 96 provided in this chapter is guilty of a class C misdemeanor.

97 (2) A person is guilty of a class B misdemeanor if:

98 (a) the person knowingly and intentionally [~~and knowingly~~] falsely represents to
 99 another person that an animal is [~~a service animal as defined in Section 62A-5b-102; or~~];

100 (i) a service animal as defined in Section 62A-5b-102; or

101 (ii) an emotional support animal as defined in Section 62A-5b-201; or

102 (b) the person knowingly and intentionally misrepresents a material fact to a health
 103 care provider for the purpose of obtaining documentation from the health care provider
 104 necessary to designate an animal as a service animal as defined in Section 62A-5b-102 or an
 105 emotional support animal as defined in Section 62A-5b-201.

106 Section 4. Section **62A-5b-201** is enacted to read:

107 **Part 2. Emotional Support Animals**

108 **62A-5b-201. Definitions.**

109 (1) (a) "Emotional support animal" means an animal in the possession of a person:

110 (i) who has a disability; and

111 (ii) who has the documentation required by Section 62A-5b-202.

112 (b) "Emotional support animal" does not include an animal in the possession of a
 113 person with a disability in any location other than the particular location described in the
 114 documentation required by Section 62A-5b-202.

115 (2) "Hospital" means any of the following licenced under Title 26, Chapter 21, Health
 116 Care Facility Licensing and Inspection Act:

117 (a) a general acute hospital;

118 (b) a specialty hospital; and

- 119 (c) an ambulatory surgical center.
- 120 (3) "Restaurant":
- 121 (a) includes any coffee shop, cafeteria, luncheonette, soda fountain, dining room, or
- 122 fast-food service where food is prepared or served for immediate consumption; and
- 123 (b) does not include:
- 124 (i) any retail establishment whose primary business or function is the sale of fuel or
- 125 food items for off-premise, but not immediate, consumption; and
- 126 (ii) except for a dinner theater, a theater that sells food items.

127 Section 5. Section **62A-5b-202** is enacted to read:

128 **62A-5b-202. Documentation of emotional support animal.**

129 (1) A mental health therapist may provide a person with a disability with

130 documentation that:

- 131 (a) is signed by the mental health therapist;
- 132 (b) is dated; and
- 133 (c) certifies that in the opinion of the mental health therapist:
- 134 (i) the person has a disability as defined in Section 62A-5b-102; and
- 135 (ii) the person with the disability:
- 136 (A) needs a particular type of emotional support animal; and
- 137 (B) needs the emotional support animal in a particular location identified in Section
- 138 62A-5b-103, except for restaurants or hospitals.

139 (2) The documentation authorized by this section is valid for one year from the date the

140 document is signed.

141 Section 6. Section **62A-5b-203** is enacted to read:

142 **62A-5b-203. Right to be accompanied by emotional support animal -- Security**

143 **deposits -- Discrimination -- Identification.**

144 (1) A person with a disability has the right to be accompanied by an emotional support

145 animal, subject to reasonable accommodation under Section 62A-5b-204, unless the emotional

146 support animal is a danger or nuisance to others as interpreted under the Americans with

147 Disabilities Act of 1990, 42 U.S.C. Sec. 12102:

- 148 (a) (i) in any of the places:
- 149 (A) specified in Section 62A-5b-103, except hospitals and restaurants; and

150 (B) that are identified in the documentation described in Section 62A-5b-202; and
151 (ii) without additional charge for the emotional support animal.

152 (b) This section does not prohibit an owner or lessor of housing accommodations from
153 charging a person, including a person with a disability, a reasonable deposit as security for any
154 damage or wear and tear that might be caused by an emotional support animal if the owner or
155 lessor would charge a similar deposit to other persons for potential wear and tear.

156 (c) An owner or lessor of private housing accommodations may not, in any manner,
157 discriminate against a person with a disability on the basis of the person's possession of an
158 emotional support animal.

159 (2) A person with a disability is liable for any loss or damage caused or inflicted to the
160 premises by the person's emotional support animal.

161 (3) A person accompanied by an emotional support animal shall, upon request, identify
162 the animal by showing the property owner or the property owner's representative the
163 documentation described in Section 62A-5b-202.

164 Section 7. Section **62A-5b-204** is enacted to read:

165 **62A-5b-204. Reasonable accommodation.**

166 A person who owns or operates a particular location specified in the mental health
167 therapist documentation shall provide reasonable accommodation to a person with a disability
168 accompanied by an emotional support animal.

169 Section 8. Section **76-9-307** is amended to read:

170 **76-9-307. Injury to service animals -- Penalties.**

171 (1) As used in this section:

172 (a) "Disability" has the same meaning as defined in Section 62A-5b-102.

173 (b) "Search and rescue dog" means a dog:

174 (i) with documented training to locate persons who are:

175 (A) lost, missing, or injured; or

176 (B) trapped under debris as the result of a natural or man-made event; and

177 (ii) affiliated with an established search and rescue dog organization.

178 (c) "Service animal" means:

179 (i) a service animal as defined in Section 62A-5b-102;

180 (ii) a psychiatric therapy animal as defined in Section 62A-5b-102; [or]

181 (iii) a search and rescue dog[-]; or

182 (iv) an emotional support animal, as defined in Section 62A-5b-201.

183 (2) It is a class A misdemeanor for a person to knowingly, intentionally, or recklessly
184 cause substantial bodily injury or death to a service animal.

185 (3) It is a class A misdemeanor for a person who owns, keeps, harbors, or exercises
186 control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient
187 control over the animal to prevent it from causing:

188 (a) any substantial bodily injury or the death of a service animal; or

189 (b) the service animal's subsequent inability to function as a service animal as a result
190 of the animal's attacking, chasing, or harassing the service animal.

191 (4) It is a class B misdemeanor for a person to chase or harass a service animal.

192 (5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises
193 control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient
194 control over the animal to prevent it from chasing or harassing a service animal while it is
195 carrying out its functions as a service animal, to the extent that the animal temporarily
196 interferes with the service animal's ability to carry out its functions.

197 (6) (a) A service animal is exempt from quarantine or other animal control ordinances
198 if it bites any person while it is subject to an offense under Subsection (2), (3), (4), or (5).

199 (b) The owner of the service animal or the person with a disability whom the service
200 animal serves shall make the animal available for examination at any reasonable time and shall
201 notify the local health officer if the animal exhibits any abnormal behavior.

202 (7) In addition to any other penalty, a person convicted of any violation of this section
203 is liable for restitution to the owner of the service animal or the person with a disability whom
204 the service animal serves for the replacement, training, and veterinary costs incurred as a result
205 of the violation of this section.

206 (8) If the act committed under this section amounts to an offense subject to a greater
207 penalty under another provision of Title 76, Utah Criminal Code, than is provided under this
208 section, this section does not prohibit prosecution and sentencing for the more serious offense.

209 Section 9. Section **78B-3-701** is amended to read:

210 **78B-3-701. Definitions.**

211 As used in this part:

- 212 (1) "Disability" has the same meaning as defined in Section 62A-5b-102.
- 213 (2) "Search and rescue dog" means a dog:
- 214 (a) with documented training to locate persons who are:
- 215 (i) lost, missing, or injured; or
- 216 (ii) trapped under debris as the result of a natural or man-made event; and
- 217 (b) affiliated with an established search and rescue dog organization.
- 218 (3) "Service animal" means:
- 219 (a) a service animal, as defined in Section 62A-5b-102;
- 220 (b) a psychiatric therapy animal, as defined in Section 62A-5b-102; [or]
- 221 (c) a search and rescue dog[-]; or
- 222 (d) an emotional support animal, as defined in Section 62A-5b-201.

S.B. 70 1st Sub. (Green) - Emotional Support Animals

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
