

SERVICE ANIMALS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends provisions related to service animals, including guide dogs, emotional support animals, and search and rescue animals.

Highlighted Provisions:

This bill:

▶ amends provisions related to attacking dogs by replacing "assistance animal" with "service animal";

▶ amends portions of the Utah Health Code by:

- providing definitions;
- replacing "blind, visually impaired, hearing impaired, or otherwise physically disabled person" and similar references with "person with a disability";

• amending a provision that permits requiring a person to provide identification for a service animal; and

• encouraging that a mental health therapist be permitted to be accompanied by a psychiatric therapy animal on the same basis that a person with a disability is permitted to be accompanied by a service animal;

▶ amends portions of the Utah Criminal Code by:

- amending definitions; and
- replacing "assistance animal" with "service animal";

§→ ▶ creates misdemeanor penalties for falsely representing that an animal is a service animal, or for misrepresenting to a health care provider the need for a service animal; ←§

▶ amends portions of the Utah Judicial Code by:

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- 28 • amending definitions; and
- 29 • replacing "assistance animal" with "service animal";
- 30 ▶ makes clarifying and conforming changes; and
- 31 ▶ makes technical corrections.

32 Monies Appropriated in this Bill:

33 None

34 Other Special Clauses:

35 None

36 Utah Code Sections Affected:

37 **AMENDS:**

38 **18-1-3**, as last amended by Chapter 302, Laws of Utah 2000

39 **76-9-307**, as enacted by Chapter 302, Laws of Utah 2000

40 **78-20-101**, as enacted by Chapter 302, Laws of Utah 2000

41 **78-20-102**, as enacted by Chapter 302, Laws of Utah 2000

42 **78-20-103**, as enacted by Chapter 302, Laws of Utah 2000

43 **RENUMBERS AND AMENDS:**

44 **62A-5b-103**, (Renumbered from 26-30-1, as last amended by Chapter 73, Laws of Utah
45 2001)

46 **62A-5b-104**, (Renumbered from 26-30-2, as last amended by Chapter 73, Laws of Utah
47 2001)

48 **62A-5b-105**, (Renumbered from 26-30-3, as last amended by Chapter 73, Laws of Utah
49 2001)

50 **62A-5b-106**, (Renumbered from 26-30-4, as last amended by Chapter 34, Laws of Utah
51 1986)

52 **62A-5b-107**, (Renumbered from 26-30-5, as enacted by Chapter 126, Laws of Utah
53 1981)

54 **ENACTS:**

55 **62A-5b-101**, Utah Code Annotated 1953

56 **62A-5b-102**, Utah Code Annotated 1953



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

59 Section 1. Section 18-1-3 is amended to read:

60 **18-1-3. Dogs attacking domestic animals, service animals, hoofed protected**
61 **wildlife, or domestic fowls.**

62 Any person may injure or kill a dog while [it]:

63 (1) the dog is attacking, chasing, or worrying [any]:

64 (a) a domestic animal having a commercial value[~~any assistance~~];

65 (b) a service animal, as defined in Section [~~78-20-101,~~] 62A-5b-102; or

66 (c) any species of hoofed protected wildlife[~~while~~];

67 (2) the dog is attacking domestic fowls[;]; or [while]

68 (3) the dog is being pursued [~~thereafter~~] for committing an act described in Subsection

69 (1) or (2).

70 Section 2. Section 62A-5b-101 is enacted to read:

71 **CHAPTER 5b. RIGHTS AND PRIVILEGES OF A PERSON WITH A DISABILITY**

72 **62A-5b-101. Title.**

73 This chapter is known as "Rights and Privileges of a Person with a Disability."

74 Section 3. Section 62A-5b-102 is enacted to read:

75 **62A-5b-102. Definitions.**

76 As used in this chapter:

77 (1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the Americans

78 With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the

79 Code of Federal Regulations, as may be amended in the future.

80 (2) "Emotional support animal":

81 (a) means an animal in the possession of a person:

82 (i) with a disability; and

83 (ii) with specific documentation from a mental health therapist that the animal is

84 needed in a particular location described in Section 62A-5b-103, other than a restaurant, by the

85 person to address a mental health condition; and

86 (b) does not include an animal in the possession of a person with a disability in any

87 other location than the particular location described in Subsection (2)(a)(ii).

88 (3) "Mental health therapist" has the same meaning as defined in Title 58, Chapter 60,

89 Mental Health Professional Practice Act.

90 (4) "Mental health therapy" has the same meaning as defined in Title 58, Chapter 60,
 91 Mental Health Professional Practice Act.

92 (5) "Psychiatric therapy animal" means an animal:

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

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

96 (6) "Restaurant":

97 (a) includes any coffee shop, cafeteria, luncheonette, soda fountain, ~~§~~→ **dining room**, ←~~§~~
 97a or fast-food service

98 where food is prepared ~~§~~→ **or served** ←~~§~~ for immediate consumption; and

99 (b) does not include:

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

102 (ii) except for a dinner theater, a theater that sells food items.

103 (7) "Service animal" means:

104 (a) (i) a guide dog;

105 (ii) a signal dog; or

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

108 (A) guiding a person with impaired vision;

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

110 (C) providing minimal protection or rescue work;

111 (D) pulling a wheelchair, or

112 (E) fetching dropped items;

113 (b) an emotional support animal; or

114 (c) an animal in training to become an animal described in Subsection (7)(a) or (b).

115 Section 4. Section **62A-5b-103**, which is renumbered from Section 26-30-1 is
 116 renumbered and amended to read:

117 **[~~26-30-1~~]. 62A-5b-103. Rights and privileges of a person with a disability.**

118 ~~[(1) The blind, visually impaired, hearing impaired, or otherwise physically disabled~~
 119 ~~person]~~

120 (1) A person with a disability has the same rights and privileges in the use of highways,

121 streets, sidewalks, walkways, public buildings, public facilities, and other public areas as
 122 ~~[able-bodied persons]~~ a person who is not a person with a disability.

123 ~~[(2) The blind, visually impaired, hearing impaired, or otherwise physically disabled~~
 124 ~~person]~~

125 (2) A person with a disability has equal rights to accommodations, advantages, and
 126 facilities offered by common carriers, including air carriers, railroad carriers, motor buses,
 127 motor vehicles, water carriers, and all other modes of public conveyance in this state.

128 ~~[(3) The blind, visually impaired, hearing impaired, or otherwise physically disabled~~
 129 ~~person]~~

130 (3) A person with a disability has equal rights to accommodations, advantages, and
 131 facilities offered by hotels, motels, lodges, and all other places of public accommodation in this
 132 state, and to places of amusement or resort to which the public is invited.

133 ~~[(4)(a) The blind, visually impaired, hearing impaired, or otherwise physically~~
 134 ~~disabled person]~~

135 (4) (a) A person with a disability has equal rights and access to public and private
 136 housing accommodations offered for rent, lease, or other compensation in this state.

137 (b) This chapter does not require a person renting, leasing, or selling private housing or
 138 real property to modify the housing or property in order to accommodate a ~~[blind, visually~~
 139 ~~impaired, hearing impaired, or otherwise physically disabled person,]~~ person with a disability
 140 or to provide a higher degree of care for that person than for ~~[a person]~~ someone who is not
 141 ~~[physically disabled]~~ a person with a disability.

142 (c) A person renting, leasing, or selling private housing or real property to a person
 143 ~~[who is blind, visually impaired, hearing impaired, or a person who is otherwise physically~~
 144 ~~disabled,]~~ with a disability shall comply with the provisions of Section ~~[26-30-2]~~ 62A-5b-104,
 145 regarding the right of ~~[those persons]~~ the person to be accompanied by a ~~[guide or]~~ service
 146 animal specially trained for that purpose.

147 Section 5. Section **62A-5b-104**, which is renumbered from Section 26-30-2 is
 148 renumbered and amended to read:

149 ~~[26-30-2].~~ **62A-5b-104. Right to be accompanied by service animal -- Security**
 150 **deposits -- Discrimination -- Animals in training -- Liability -- Identification -- Psychiatric**
 151 **therapy animals.**

152 ~~[(1) (a) The blind, visually impaired, hearing impaired, or otherwise physically~~
 153 ~~disabled person]~~

154 (1) (a) A person with a disability has the right to be accompanied by a ~~[guide or]~~
 155 service animal~~[-, as defined by]~~ ~~§→ [†]~~ **, unless the service animal is a danger or nuisance to others as**
 156a **interpreted under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102 [†,] ←§**
 156 ~~specially trained for that purpose,];~~

157 (i) in any of the places specified in Section [26-30-†] 62A-5b-103; and

158 (ii) without additional charge for the [guide or] service animal.

159 (b) This section does not prohibit an owner or lessor of private housing
 160 accommodations from charging a person, including a person with a disability, a reasonable
 161 deposit as security for any damage or wear and tear that might be caused by ~~[the]~~ a service
 162 animal~~[-]~~ if the owner or lessor would charge a similar deposit to other persons for potential
 163 wear and tear ~~§→ [by an animal that is not a service animal] ←§~~ .

164 (c) An owner or lessor of private housing accommodations may not, in any manner,
 165 discriminate against a ~~[blind, visually impaired, hearing impaired, or otherwise physically~~
 166 ~~disabled person]~~ person with a disability on the basis of the person's possession of a ~~[guide or]~~
 167 service animal ~~[specially trained for that purpose].~~

168 (2) A person~~[-, whether or not the person is blind, visually impaired, hearing impaired,~~
 169 ~~or otherwise physically disabled,]~~ who is not a person with a disability has the right to be
 170 accompanied by an animal that is in training to become a ~~[guide or]~~ service animal;

171 (a) in any of the places specified in Section [26-30-†] 62A-5b-103; and

172 (b) without additional charge for the animal.

173 (3) A ~~[blind, visually impaired, hearing impaired, or otherwise physically disabled~~
 174 ~~person]~~ person with a disability is liable for any loss or damage caused or inflicted to the
 175 premises by the ~~[individual's guide or]~~ person's service animal.

176 (4) ~~[Persons]~~ A person accompanied by a ~~[specially trained guide or]~~ service animal~~[-~~
 177 ~~or by an animal that is in training to become a guide or service animal, may first be required]~~ is
 178 encouraged to identify the animal by exhibiting one or more of the following:

179 (a) the animal's laminated identification card [or other];

180 (b) the animal's service vest; or

181 (c) another form of identification[-, before these provisions apply].

182 (5) Owners, operators, and regulators of places described in Section 62A-5b-103 are

183 encouraged to permit a mental health therapist to be accompanied by a psychiatric therapy
 184 animal in the course of providing mental health therapy to a person with a disability on the
 185 same basis as a person with a disability is permitted to be accompanied by a service animal
 186 under this section.

187 Section 6. Section **62A-5b-105**, which is renumbered from Section 26-30-3 is
 188 renumbered and amended to read:

189 ~~[26-30-3].~~ **62A-5b-105. Policy of state to employ persons with a disability.**

190 It is the policy of this state that a person [~~who is blind, visually impaired, and otherwise~~
 191 ~~physically disabled~~] with a disability shall be employed in the state service, the service of the
 192 political subdivisions of the state, in the public schools, and in all other employment supported
 193 in whole or in part by public funds on the same terms and conditions as [~~the able-bodied~~] a
 194 person who is not a person with a disability, unless it is shown that the particular disability
 195 prevents the performance of the work involved.

196 Section 7. Section **62A-5b-106**, which is renumbered from Section 26-30-4 is
 197 renumbered and amended to read:

198 ~~[26-30-4].~~ **62A-5b-106. Interference with rights provided in this chapter** ~~§→~~ **[a**
 199 **class C misdemeanor] - Misrepresentation of rights under this chapter** ~~←§~~ **.**

200 ~~§→~~ **(1)** ~~←§~~ Any person, or agent of any person, who denies or interferes with the rights
 200a provided in

201 this chapter is guilty of a class C misdemeanor.

201a ~~§→~~ **(2) A person is guilty of a class B misdemeanor if:**

201b **(a) the person intentionally and knowingly falsely represents to another person that an**
 201c **animal is a service animal as defined in Section 62A-5b-102; or**

201d **(b) the person knowingly and intentionally misrepresents a material fact to a health**
 201e **care provider for the purpose of obtaining documentation from the health care provider**
 201f **necessary to designate an animal as a service animal as defined in Section 62A-5b-102.** ~~←§~~

202 Section 8. Section **62A-5b-107**, which is renumbered from Section 26-30-5 is
 203 renumbered and amended to read:

204 ~~[26-30-5].~~ **62A-5b-107. Annual "White Cane Safety Day" proclaimed.**

205 Each year the governor shall take notice of October [~~15th~~] 15 as White Cane Safety
 206 Day.

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

208 **76-9-307. Injury to service animals -- Penalties.**

209 (1) As used in this section:

210 [~~(a) "Assistance animal" means an animal that is trained or is in training to:~~
211 [~~(i) lead or guide a person who is blind or has a visual disability;~~
212 [~~(ii) assist a person who has a physical disability, including hearing impairment or~~
213 ~~deafness; or]~~

- 214 ~~[(iii) assist a person who has a mental disability.]~~
- 215 ~~[(b) "Person with a disability" means a person who is blind, visually impaired, deaf,~~
- 216 ~~hearing impaired, or otherwise has a physical or mental disability.]~~
- 217 (a) "Disability" has the same meaning as defined in Section 62A-5b-102.
- 218 (b) "Search and rescue dog" means a dog:
- 219 (i) with documented training to locate persons who are:
- 220 (A) lost, missing, or injured; or
- 221 (B) trapped under debris as the result of a natural or man-made event; and
- 222 (ii) affiliated with an established search and rescue dog organization.
- 223 (c) "Service animal" means:
- 224 (i) a service animal as defined in Section 62A-5b-102;
- 225 (ii) a psychiatric therapy animal as defined in Section 62A-5b-102; or
- 226 (iii) a search and rescue dog.
- 227 (2) It is a class A misdemeanor for a person to knowingly, intentionally, or recklessly
- 228 cause substantial bodily injury or death to ~~[an assistance]~~ a service animal.
- 229 (3) It is a class A misdemeanor for a person who owns, keeps, harbors, or exercises
- 230 control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient
- 231 control over the animal to prevent it from causing:
- 232 (a) any substantial bodily injury or the death of ~~[an assistance]~~ a service animal; or
- 233 (b) the ~~[assistance]~~ service animal's subsequent inability to function as ~~[an assistance]~~ a
- 234 service animal as a result of the animal's attacking, chasing, or harassing the ~~[assistance]~~
- 235 service animal.
- 236 (4) It is a class B misdemeanor for a person to chase or harass ~~[an assistance]~~ a service
- 237 animal.
- 238 (5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises
- 239 control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient
- 240 control over the animal to prevent it from chasing or harassing ~~[an assistance]~~ a service animal
- 241 while it is carrying out its functions as ~~[an assistance]~~ a service animal, to the extent that the
- 242 animal temporarily interferes with the ~~[assistance]~~ service animal's ability to carry out its
- 243 functions.
- 244 (6) (a) ~~[An assistance]~~ A service animal is exempt from quarantine or other animal

245 control ordinances if it bites any person while it is subject to an offense under Subsection (2),
246 (3), (4), or (5).

247 (b) The owner of the ~~[assistance]~~ service animal or the person with a disability whom
248 the ~~[assistance]~~ service animal serves shall make the animal available for examination at any
249 reasonable time and shall notify the local health officer if the animal exhibits any abnormal
250 behavior.

251 (7) In addition to any other penalty, a person convicted of any violation of this section
252 is liable for restitution to the owner of the ~~[assistance]~~ service animal or the person with
253 ~~[disabilities]~~ a disability whom the ~~[assistance]~~ service animal serves for the replacement,
254 training, and veterinary costs incurred as a result of the violation of this section.

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

258 Section 10. Section ~~78-20-101~~ is amended to read:

259 **~~78-20-101. Definitions.~~**

260 As used in this ~~[section]~~ chapter:

261 ~~[(1) "Assistance animal" means an animal that is trained or is in training to:]~~

262 ~~[(a) lead or guide a person who is blind or has a visual disability;]~~

263 ~~[(b) assist a person who has a physical disability, including hearing impairment or~~
264 ~~deafness; or]~~

265 ~~[(c) assist a person who has a mental disability;]~~

266 ~~[(2) "Person with a disability" means a person who is blind, visually impaired, deaf,~~
267 ~~hearing impaired, or otherwise has a physical or mental disability.]~~

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

269 (2) "Search and rescue dog" means a dog:

270 (a) with documented training to locate persons who are:

271 (i) lost, missing, or injured; or

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

273 (b) affiliated with an established search and rescue dog organization.

274 (3) "Service animal" means:

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

276 (b) a psychiatric therapy animal, as defined in Section 62A-5b-102; or

277 (c) a search and rescue dog.

278 Section 11. Section **78-20-102** is amended to read:

279 **78-20-102. Damages recoverable for harm to or theft of service animal.**

280 (1) A person with a disability who uses [~~an assistance~~] a service animal, or the owner
281 of [~~an assistance~~] a service animal has a cause of action for economic and noneconomic
282 damages against:

283 (a) any person who steals or, without provocation, attacks the [~~assistance~~] service
284 animal; and

285 (b) the owner or keeper of any animal that without provocation attacks [~~an assistance~~] a
286 service animal due to the owner's or keeper's negligent failure to exercise sufficient control
287 over the animal to prevent the attack.

288 (2) The action authorized by this section maybe brought by a person with a disability
289 who uses the [~~assistance~~] service animal, or the owner of the service animal.

290 (3) The measure of economic damages in an action brought under Subsection (1)
291 regarding [~~an assistance~~] a service animal that is not returned or is killed or injured due to an
292 unprovoked attack so that the service animal is unable [~~again~~] to function again as a service
293 animal includes:

294 (a) the replacement value of an equally trained [~~assistance~~] service animal, without any
295 differentiation for the age or experience of the animal; and

296 (b) costs and expenses incurred by the person with a disability or the owner, including:

297 (i) costs of temporary replacement assistance services, whether provided by another
298 [~~assistance~~] service animal or by a person;

299 (ii) reasonable costs incurred in efforts to recover a stolen service animal; and

300 (iii) court and attorney costs incurred in bringing an action under this section.

301 (4) If the unprovoked attack on a service animal results in injuries from which the
302 animal recovers so it is able to again function as a service animal for the person with a
303 disability, or if the theft of the service animal results in the recovery of the service animal and
304 the animal is again able to function as a service animal for the person with a disability, the
305 measure of economic damages is the costs and expenses incurred by the person with a
306 disability or the owner as a result of the theft of or injury to the service animal, and includes:

- 307 (a) veterinary medical expenses;
- 308 (b) costs of temporary replacement assistance services, whether provided by another
- 309 ~~[assistance]~~ service animal or a person;
- 310 (c) costs incurred in recovering the ~~[assistance]~~ service animal, such as a reward; and
- 311 (d) court and attorney costs incurred in bringing an action under this section.

312 Section 12. Section **78-20-103** is amended to read:

313 **78-20-103. Limitation on cause of action.**

314 A cause of action does not exist under this section if the person with a disability who
315 uses the service animal or the person having custody or supervision of the service animal was
316 committing a civil or criminal trespass at the time of the:

- 317 (1) theft of, or the chasing or harassment of the service animal by a person who owns
- 318 or exercises control over the property upon which the trespass is committed; or
- 319 (2) attack upon, or the chasing or harassment of ~~[an assistance]~~ a service animal by an
- 320 animal that is currently kept or maintained on the property where the trespass is committed.

Legislative Review Note
as of 1-25-07 10:58 AM

Office of Legislative Research and General Counsel

S.B. 192 - Service Animals

Fiscal Note

2007 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.

1/30/2007, 4:02:59 PM, Lead Analyst: Headden, D.

Office of the Legislative Fiscal Analyst