

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0756.01 Jane Ritter x4342

HOUSE BILL 16-1308

HOUSE SPONSORSHIP

Kagan, Priola, Klingenschmitt, Lontine, McCann, Melton, Salazar, Willett

SENATE SPONSORSHIP

Newell, Todd

House Committees
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A BILL FOR AN ACT

101 CONCERNING THE OFFENSE OF FRAUDULENT MISREPRESENTATION OF
102 A SERVICE ANIMAL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates a criminal offense of fraudulent misrepresentation of a service animal (offense). The offense applies to a person who intentionally fraudulently misrepresents an animal in his or her possession as a service animal for the purpose of obtaining the rights and privileges granted by law to persons with disabilities with service animals. The offense also applies to a person who knowingly and fraudulently

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

misrepresents himself or herself as a trainer of a service animal.

The penalty for fraudulent misrepresentation of a service animal mirrors the penalty for an offender who violates the provisions of the law concerning reserved parking for persons with disabilities. A person who has been convicted of an offense may petition the court to have his or her record of first conviction sealed if he or she has not committed an offense in the 3 years prior to petitioning the court.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Service animals that are properly trained to assist persons with
5 disabilities play a vital role in establishing independence for such persons;

6 (b) The term "service animal" has a distinct meaning in the law.
7 A service animal means a dog or miniature horse trained to do work or
8 perform tasks for the benefit of an individual with a disability and whose
9 work or task is directly related to the individual's disability. Under the
10 law, the provision of emotional support, well-being, comfort, or
11 companionship does not constitute the work or tasks of a service animal.

12 (c) No vest, other marking, or documentation is required for an
13 animal to qualify as a service animal, nor are such vests, markings, or
14 documentation a reliable indication of whether an animal is, by law, a
15 service animal. People sometimes erroneously think that a therapy animal,
16 an emotional support animal, or any animal wearing a vest or having any
17 other type of marking is a service animal as defined by law.

18 (d) There are an increasing number of occurrences where people
19 exploit the confusion related to service animals and attempt to bring an
20 animal into a place that it would otherwise not be allowed to enter by
21 passing off a pet, therapy animal, or emotional support animal as a service
22 animal or a service animal in training, either by oral misrepresentation,

1 placing a vest or other marking on the animal, or presenting a
2 "certificate", despite knowing that it is not a service animal;

3 (e) Some companies mislead individuals into believing that they
4 will be entitled to the rights or privileges for individuals with disabilities
5 with service animals if only they buy the company's vests or obtain some
6 type of certificate. These misrepresentations, in some cases, are unlawful
7 deceptive trade practices and compound the confusion around service
8 animals.

9 (f) Commendably, federal and state laws require places of public
10 accommodation, including restaurants, theaters, stores, hospitals, and
11 more, to allow any animal that is presented as a service animal or a
12 service animal in training into the place of public accommodation. These
13 same places of public accommodation face a dilemma when someone
14 enters the premises and fraudulently misrepresents his or her animal as a
15 service animal or service animal in training.

16 (g) To respect the privacy of individuals with disabilities,
17 regulations sensibly allow businesses and other places of public
18 accommodation to ask only two questions of a person who is being
19 assisted by an animal in such a place:

20 (I) Is the dog [or miniature horse] a service animal required
21 because of a disability?

22 (II) What work or task has the dog [or miniature horse] been
23 trained to perform?

24 (h) False answers to these two questions harm not only the place
25 of public accommodation and its patrons, but also individuals with
26 disabilities who legitimately rely on service animals. If an animal is not
27 properly trained, the place of public accommodation and its clientele may

1 suffer damages, health issues, injury, or other problems. When people try
2 to falsely represent a non-service animal as a service animal or a service
3 animal in training, business owners and other places of public
4 accommodation become increasingly distrustful that an animal being
5 represented to them as a service animal or service animal in training is,
6 in fact, a service animal or service animal in training. Misrepresentation
7 of service animals delegitimizes the program and makes it harder for
8 persons with disabilities to gain unquestioned acceptance of their
9 legitimate, properly trained, and essential service animals.

10 (2) Therefore, the general assembly finds that the state of
11 Colorado needs to enact a crime of fraudulent misrepresentation of a
12 service animal for a person with a disability.

13 **SECTION 2.** In Colorado Revised Statutes, **add** 18-13-131 as
14 follows:

15 **18-13-131. Fraudulent misrepresentation of a service animal**
16 **for a person with a disability - penalty - sealing of conviction records**
17 **- definitions.** (1) A PERSON COMMITS FRAUDULENT MISREPRESENTATION
18 OF A SERVICE ANIMAL IF:

19 (a) (I) THE PERSON INTENTIONALLY FRAUDULENTLY
20 MISREPRESENTS AN ANIMAL IN HIS OR HER POSSESSION AS HIS OR HER
21 SERVICE ANIMAL FOR THE PURPOSE OF OBTAINING ANY OF THE RIGHTS OR
22 PRIVILEGES SET FORTH IN SECTION 24-34-803, C.R.S., FOR INDIVIDUALS
23 WITH DISABILITIES WITH SERVICE ANIMALS; AND

24 (II) THE PERSON KNOWS THAT THE ANIMAL IN QUESTION IS NOT A
25 SERVICE ANIMAL.

26 (b) (I) THE PERSON INTENTIONALLY FRAUDULENTLY
27 MISREPRESENTS HIMSELF OR HERSELF AS A TRAINER OF A SERVICE ANIMAL

1 FOR THE PURPOSE OF OBTAINING ANY OF THE RIGHTS AND PRIVILEGES SET
2 FORTH IN SECTION 24-34-803, C.R.S., FOR INDIVIDUALS WITH DISABILITIES
3 WITH SERVICE ANIMALS;

4 (II) THE PERSON IS NOT TRAINING THE ANIMAL IN HIS OR HER
5 POSSESSION AS A SERVICE ANIMAL; OR

6 (III) THE ACTIVITY FOR WHICH THE ANIMAL IN HIS OR HER
7 POSSESSION IS BEING USED WOULD NOT QUALIFY AS A BENEFIT PROVIDED
8 BY A SERVICE ANIMAL, AS THOSE BENEFITS ARE DESCRIBED IN SECTION
9 24-34-803, C.R.S.

10 (2) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (1)
11 OF THIS SECTION COMMITS A MISDEMEANOR AND, UPON CONVICTION,
12 SHALL BE PUNISHED BY A SURCHARGE OF THIRTY-THREE DOLLARS UNDER
13 SECTIONS 24-4.1-119 (1) (a), C.R.S., AND:

14 (a) FOR A FIRST OFFENSE, A FINE OF NOT LESS THAN THREE
15 HUNDRED FIFTY DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS;

16 (b) FOR A SECOND OFFENSE, A FINE OF NOT LESS THAN SIX
17 HUNDRED DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS; AND

18 (c) FOR A THIRD OR SUBSEQUENT OFFENSE, A FINE OF NOT LESS
19 THAN ONE THOUSAND DOLLARS BUT NOT MORE THAN FIVE THOUSAND
20 DOLLARS, IN ADDITION TO NOT MORE THAN TEN HOURS OF COMMUNITY
21 SERVICE.

22 (3) (a) A DEFENDANT MAY PETITION THE DISTRICT COURT OF THE
23 DISTRICT IN WHICH ANY CONVICTION RECORDS PERTAINING TO THE
24 DEFENDANT'S FIRST CONVICTION FOR FRAUDULENT MISREPRESENTATION
25 OF A SERVICE ANIMAL, AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION,
26 ARE LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT
27 FOR BASIC IDENTIFYING INFORMATION.

1 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS
2 SUBSECTION (3) FOR THE SEALING OF A RECORD OF CONVICTION FOR
3 FRAUDULENT MISREPRESENTATION OF A SERVICE ANIMAL, THE COURT
4 SHALL ORDER THE RECORD SEALED IF THE FOLLOWING CRITERIA ARE MET:

5 (I) THE PETITION IS FILED;

6 (II) THE FILING FEE IS PAID;

7 (III) THE DEFENDANT'S FIRST CONVICTION FOR FRAUDULENT
8 MISREPRESENTATION OF A SERVICE ANIMAL WAS AT LEAST THREE YEARS
9 PRIOR TO THE DATE OF THE FILING OF THE PETITION; AND

10 (IV) THE DEFENDANT HAS NOT HAD A SUBSEQUENT CONVICTION
11 FOR FRAUDULENT MISREPRESENTATION OF A SERVICE ANIMAL.

12 (c) AN ORDER ENTERED PURSUANT TO THIS SUBSECTION (3) MUST
13 BE DIRECTED TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART
14 OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER.
15 WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS
16 PURSUANT TO THIS SUBSECTION (3), THE DEFENDANT SHALL PROVIDE THE
17 COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE
18 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE
19 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL
20 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.
21 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
22 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
23 WERE SEALED.

24 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
27 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.

1 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
2 REGULATIONS.

3 (b) "SERVICE ANIMAL" HAS THE SAME MEANING AS SET FORTH IN
4 THE IMPLEMENTING REGULATIONS OF TITLE II AND TITLE III OF THE
5 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
6 12101 ET SEQ.

7 (c) "TRAINER OF A SERVICE ANIMAL" MEANS A PERSON WHO
8 INDIVIDUALLY TRAINS A SERVICE ANIMAL.

9 **SECTION 3. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.