

SERVICE, ASSISTANCE, AND EMOTIONAL SUPPORT ANIMALS

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A. DISABILITY

1. Animal owner must be disabled

All federal and state laws relating to service, assistance, and emotional support animals require that the animal owner be either physically or mentally disabled.

This is probably the least known and most commonly violated rule when it comes to people taking their animals into business establishments and on airplanes. If a person is not physically or mentally disabled, then no law requires the animal to be admitted.

2. Federal definitions of disability

a) Americans with Disabilities Act¹ (applies to public accommodations, public transportation other than airplanes, and employment)

The ADA defines an individual with a “disability” as one who has “a physical or mental impairment that substantially limits one or more major life activities of such individual; [or an individual that has] a record of such an impairment; or [an individual that is] regarded as having such an impairment...”² A “major life activity “include[s] caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”³ “Regarded as having such an impairment” means “the individual [must] establish that he or she has been subjected to an action prohibited under [the ADA] because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.”⁴ However, this does not include “impairments...with an actual or expected duration of 6 months or less.”⁵ The term “disability” does not include sexual disorders.⁶

“Impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as (list of body systems) or any mental

¹ 42 U.S.C §12102

² *Id.*

³ *Id.* §12102(2)

⁴ *Id.* §12102(3)(A).

⁵ *Id.* §12102(3)(B).

⁶ “Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments” are expressly excluded. 28 C.F.R. § 105(g)

or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.”⁷ “Homosexuality and bisexuality” are not impairments.⁸

a) Air Carrier Access Act⁹ (applies to airplanes)

Disability means “a physical or mental impairment that, on a permanent or temporary basis, substantially limits one of more major life activities, has a record of such an impairment, or is regarded as having such an impairment.”¹⁰ A “physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: (listed body systems) or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”¹¹ This “includes but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.”¹² The definition expressly includes “emotional illness.”¹³ “Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”¹⁴

b) U.S. Fair Housing Act¹⁵ (applies to housing, HOA’s, city land use ordinances)

The federal Fair Housing Act uses the term “handicap” instead of disability and it applies to a person who has “a physical or mental impairment which substantially limits one or more of such person’s major life activities; a record of having such impairment, or being regarded as having such an impairment.”¹⁶ The term “handicap” does not include addiction to a controlled substance.¹⁷ According to the Department of Justice, “the term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury,

⁷ *Id* § 105(b)

⁸ *Id.*

⁹ 49 USC § 41705

¹⁰ 14 C.F.R. § 382.3

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 42 U.S.C. § 3601 *et seq*

¹⁶ *Id.*

¹⁷ *Id.*

and mental illness” and “the term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.”¹⁸

3. Texas definitions of disability

- a) **Texas Human Resources Code** (applies to all public accommodations, public Transportation, and employment):

Disability means “a mental or physical disability, an intellectual or developmental disability, a hearing impairment, deafness, a speech impairment, a visual impairment, post-traumatic stress disorder, or any health impairment that requires special ambulatory devices or services.”¹⁹

- b) **Texas Fair Housing Act** (applies to housing, HOA’s and city land use ordinances)

"Disability means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.”²⁰

B. THE ANIMALS

1. SERVICE ANIMALS

Americans with Disabilities Act (Title III- public accommodations): A service animal is “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.”²¹ No other species of animal may qualify.²² The tasks performed by the animal must be directly related to the person’s disability.²³ Providing emotional support, comfort, and

¹⁸ <https://www.justice.gov/crt/fair-housing-act-1#disability>

¹⁹ TEX. HUM. RES. CODE § 121.002(4)

²⁰ TEX. PROP. CODE § 301.003(6)

²¹ 28 C.F.R. § 35.104

²² *Id.*

²³ Examples include assisting visually impaired people with navigation, alerting a deaf person to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting a person during a seizure, alerting a person to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to people with mobile disabilities, and helping people with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. *Id.*

companionship do not constitute tasks under the definition.²⁴ Animals in training do not qualify as service animals.²⁵ The ADA also requires public entities to “make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.”²⁶

Americans with Disabilities Act (Title III- transportation other than aircraft):

Service animal means “any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items.”²⁷

Americans with Disabilities Act (Title I- employment): Title I does not mention service animals.²⁸ Instead it requires employers to make “reasonable accommodations” for a disabled person.²⁹ According to the EEOC, which implements Title I, allowing a service animal such as a guide dog may be a reasonable accommodation, although no mention is made as to the types of animals that may qualify.³⁰

Air Carrier Access Act (airplanes): “service animal” is not defined in the rules enacted by the Department of Transportation and the rules do not specify which species or breeds of animals may qualify as service animals. However, the rules exclude “certain unusual service animals such a snakes, other reptiles, rodents and spiders.”³¹ With all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), the carrier must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight’s destination.)³²

²⁴ *Id.*

²⁵ Q6 at https://www.ada.gov/regs2010/service_animal_qa.html

²⁶ 28 C.F.R. § 36.136(i)

²⁷ 49 C.F.R. § 37.3

²⁸ *See generally* 42 U.S.C § 12112

²⁹ *Id* at § 12112(b)(5)

³⁰ *See* 29 CFR § 1630.2(o)(1) Appendix; <https://www.law.cornell.edu/cfr/text/29/1630.2#o>

³¹ 14 C.F.R. § 382.117(f)

³² *Id.*

Texas law: The terms “service animal” and “assistance animal” are used synonymously. It is a specially trained dog.³³ The Texas statute provides that, “[a]ssistance animal and service animal means a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability.”³⁴ An emotional support or therapy animal that is not trained to perform any specific task pertaining to a mental disability but whose presence provides comfort and emotional well-being to a disabled person would not qualify as an assistance animal or service animal under Texas law.

2. ASSISTANCE ANIMALS

U.S Fair Housing Act: According to the Department of Housing and Urban Development (HUD), which implements the Fair Housing Act, an assistance animal “is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”³⁵ “While dogs are the most common type of assistance animal, other animals can also be assistance animals.”³⁶ The animal does not need to be specially trained.³⁷

Texas Law: The terms, “assistance animal” and “service animal” are used synonymously (See Texas Law paragraph above.)

3. EMOTIONAL SUPPORT ANIMALS

These are animals whose presence provides comfort and emotional well-being to a mentally disabled person but are not trained to perform any specific task pertaining to the person’s disability.

Americans with Disabilities Act (employment): Title I of the ADA and the EEOC implementation rules do not state what types of animals qualify for purposes of making a reasonable accommodation in the workplace. There is no requirement that an animal be specially

³³ See TEX. HUM. RES. CODE § 121.002(1)

³⁴ *Id.*

³⁵ See https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

³⁶ See

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/ReasonableAccommodations15

³⁷ *Id.*

trained to perform tasks as in Title III (public accommodations.) This leaves open the possibility that an emotional support animal qualifies as a reasonable accommodation.

Air Carrier Access Act (airplanes): The rules enacted by the Department of Transportation allow emotional support animals but do not specify which species or breeds of animals may qualify as emotional support animals. However, the rules exclude “certain unusual service animals such as snakes, other reptiles, rodents and spiders.”³⁸ With all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), the carrier must determine whether any factors preclude their traveling in the cabin (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service)³⁹

U.S. Fair Housing Act: According to HUD, an assistance animal includes an animal that “provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”⁴⁰ There is no requirement that the animal be specially trained.⁴¹

Texas Fair Housing Act: prohibits discrimination against disabled buyers or renters of dwellings and requires “[r]easonable accommodations (to be made) in rules, policies, practices, or services...”⁴² According to the Texas Department of Housing and Community Affairs, a reasonable accommodation includes keeping a “companion animal.”⁴³ The statute does not mention service or assistance animals and thus leaves open the possibility that emotional support animals would be a “reasonable accommodation.”

4. THERAPY ANIMALS

These are animals that provides affection and comfort to people in hospitals, nursing homes, schools, hospices, disaster areas, etc. and psychological or physiological therapy to individuals other than their handlers. These animals have stable temperaments and friendly, easy-going personalities. Typically, they visit hospitals, schools, hospices, nursing homes and more. They do not have any special legal status and are not recognized by statute.

³⁸ 14 C.F.R. § 382.117(f)

³⁹ *Id.*

⁴⁰ See https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

⁴¹ *Id.*

⁴² TEX. PROP. CODE § 301.025(a)

⁴³ See <https://www.tdhca.state.tx.us/fair-housing/renters.htm>

5. CERTIFICATION, REGISTRATION AND LICENSING OF ANIMALS

No federal or Texas statute requires service, assistance, or emotional support animals to be registered, certified, licensed or have any special identification or to wear a special collar, vest, or harness.⁴⁴ However, there is a plethora of online companies that make money by “registering” animals and selling “certificates” along with other accoutrements such as identification cards, vests, collars, and harnesses.⁴⁵ For \$69 dog owners can purchase a “Basic Dog Kit” which includes an ID card and certificate or they can splurge and spend \$199 for the “Deluxe Kit” which includes ID card, certificate, registration, vest, tag, harness, leash, dog pouch, etc.⁴⁶ None of this is required by the ADA or Texas law.⁴⁷

Colleges and other entities such as local governments, may offer voluntary registries for service animals.⁴⁸ Many communities maintain voluntary registries that serve a public purpose; for example to ensure that emergency personnel know to look for a service dog during an evacuation.⁴⁹ An entity may not, however, require that a dog be registered as a service animal.⁵⁰

6. NOT EXEMPT FROM ANIMAL CONTROL LAWS

Disabled people who have service animals are not exempt from local animal control or public health requirements.⁵¹ Therefore, the Texas statute⁵² and municipal ordinances pertaining to dangerous dogs and dog attacks apply to service animals. So does the Texas Rabies Control Act.⁵³ Service animals are likewise subject to all local licensing, registration, and vaccination requirements.⁵⁴ However, mandatory registration of animals *as service animals* is not permissible under the ADA.⁵⁵

⁴⁴ See Q9 at https://www.ada.gov/regs2010/service_animal_qa.html TEX. HUM. RES. CODE § 121.002(1)

⁴⁵ See e.g.: <https://www.officialservicedogregistry.com/register-your-dog/?gclid=CNe8KP9itICFOgraQodjroHYw>, http://usdogregistry.org/?gclid=CPqJ4M_9itICFOEIaOodA8ODLg; <https://www.nsarco.com/http://registerservicedogs.com/?gclid=CMe4kZj-itICFOaHaQodIAIHZA>.

⁴⁶ *Id*

⁴⁷ See TEX. HUM. RES. CODE § 121.002(1); Q9 at https://www.ada.gov/regs2010/service_animal_qa.html

⁴⁸ Q21 at https://www.ada.gov/regs2010/service_animal_qa.html

⁴⁹ *Id*.

⁵⁰ Q20 at https://www.ada.gov/regs2010/service_animal_qa.html

⁵¹ *Id* at Q18

⁵² TEX. HEALTH & SAFETY CODE Ch. 822.

⁵³ *Id* at Ch. 826.

⁵⁴ Q24 at http://fclawlib.libguides.com/ld.php?content_id=22722486

⁵⁵ *Id* at Q20

7. ANIMALS IN TRAINING

Service animals in training do not qualify as service animals under the ADA.⁵⁶ An animal must already be trained before it can be taken into public places.⁵⁷ However, some state and local laws allow animals that are still in training. In Texas service animals in training must be allowed into any public facility if accompanied by an “approved trainer” (the statute does not say approved by whom.)⁵⁸

8. FALSELY REPRESENTING THAT AN ANIMAL IS A SERVICE ANIMAL

The ADA has no penalty. It does not provide any type of civil or criminal penalty for a person who falsely represents that an animal is a service animal. Consequently, service animal fraud has become a widespread problem in this country, with people taking their pets into public places and claiming they are service animals.⁵⁹ This is spurred on by a cottage industry of “service animal” websites like the “National Service Animal Registry” which, for \$64.95 plus \$7.95 shipping and no background check whatsoever, will send a package of ID cards, certificates and patches.⁶⁰

It is a misdemeanor in Texas. Using a harness or leash to falsely represent that a service animal has been specially trained is a misdemeanor in Texas punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves disabled people, to be completed in not more than one year.⁶¹ Otherwise, if no harness or leash is used to make the false representation, there is no penalty under Texas law for simply lying about an animal being a service animal.⁶²

9. INJURING, HARASSING OR FAILING TO CARE FOR AN ANIMAL

In Texas it is an offense to intentionally, knowingly or recklessly attack, kill, or injure an

⁵⁶ Q6 at https://www.ada.gov/regs2010/service_animal_qa.html

⁵⁷ *Id.*

⁵⁸ See TEX. HUM. RES. CODE § 121.003(i)

⁵⁹ See <https://www.wcpo.com/news/insider/blake-fiona-service-dog-fraud-pet-owners-who-falsely-claim-their-dogs-are-service-dogs-create-havoc>

⁶⁰ See <https://www.nsarco.com/>

⁶¹ See TEX. HUM. RES. CODE § 121.006

⁶² *Id.*

assistance animal or to incite or permit another animal to attack, kill or injure an assistance animal.⁶³ The level of offense ranges from a Class A misdemeanor to a third degree felony, depending on whether the assistance animal is attacked, injured or killed.⁶⁴ A court may order restitution, including veterinary bills and retraining an injured assistance animal.⁶⁵

It is also a misdemeanor to assault, harass, or interfere with, an assistance animal or attempt to do so.⁶⁶ The punishment is a fine of not more than \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.⁶⁷ Additionally, a person who commits these offenses may be sued for monetary damages, and there is a conclusive presumption of damages of at least \$300.⁶⁸

A disabled person who “habitually abuses or neglects to feed or otherwise neglects to properly care for his or her assistance animal is subject to seizure of the animal” under Chapter 821 of the Texas Health and Safety Code.⁶⁹

10. LIABILITY FOR DAMAGE OR INJURY CAUSED BY AN ASSISTANCE ANIMAL

In Texas a disabled person who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.⁷⁰ A disabled person who uses an assistance animal for assistance in travel or auditory awareness must keep the animal properly harnessed or leashed and is liable for any injuries caused by a failure to do so.⁷¹ Under the ADA, if a business such as a hotel normally charges for damage caused by guest, a disabled person may also be charged for damage caused by a service animal.⁷²

C. PUBLIC ACCOMMODATIONS

1. The Americans with Disabilities Act⁷³

Congress’ purpose in passing the Americans with Disabilities Act (ADA) was to ensure that

⁶³ See TEX. PENAL CODE § 42.091.b.

⁶⁴ *Id* at § 42.091(c)

⁶⁵ *Id* at § 42.091(d)

⁶⁶ See TEX. HUM. RES. CODE § 121.003(j)

⁶⁷ *Id* at § 121.004(a)

⁶⁸ *Id* at § 121.004(b)

⁶⁹ *Id* at § 121.006(b)

⁷⁰ *Id* at § 121.005

⁷¹ *Id* at § 121.005(b)

⁷² See www.ada.gov/service_animals_2010.htm

⁷³ 42 U.S.C Chapter 126; <https://www.law.cornell.edu/uscode/text/42/chapter-126>

individuals who suffer from “physical or mental disabilities” did not suffer “diminished” rights when “participat[ing] in all aspects of society.”⁷⁴ The ADA sought to increase disabled individuals’ rights in “employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.”⁷⁵ The ADA is divided into three titles. Title I applies to most employers,⁷⁶ Title II applies to state and local governments,⁷⁷ and Title III applies to private entities that serve as public accommodations and transportation.⁷⁸ The United States Attorney General is responsible for promulgating regulations that implement the ADA.⁷⁹ The Code of Federal Regulations provide that “public accommodations shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”⁸⁰

2. Texas access statute

Chapter 121 of the Texas Human Resources Code is the Texas equivalent to the ADA.⁸¹ It states that it is the policy of this state “to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed and to otherwise fully enjoy and use all public facilities available within the state.”⁸² No person with a service animal may be denied admission to a public facility.⁸³

3. Only dogs and miniature horses may qualify as “service animals”

a) Dogs

The ADA defines service animal as:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with

⁷⁴ *Id.* § 12101(a)(1)

⁷⁵ *Id.* § 12101(a)(3).

⁷⁶ *Id.* § 12111-121117

⁷⁷ *Id.* § 12131 *et seq.*; The regulations applying Title II to state and local governments are in 28 C.F.R Part 35

⁷⁸ *Id.* § 12181-12189

⁷⁹ 42 U.S.C §12134(a)

⁸⁰ 28 C.F.R. § 36.302

⁸¹ TEX. HUM. RES. CODE Chapter 121.001

⁸² *Id.*

⁸³ *Id.* at § 121.003(c)

navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.⁸⁴

The Texas statute defines “assistance animal” and “service animal” as “a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability.”⁸⁵

b) Dogs must be specially trained

Under the ADA “[t]he work or tasks performed by a service animal must be directly related to the individual’s disability.”⁸⁶ The Texas statute also requires the animal to be “specially trained.”⁸⁷ Emotional support animals are expressly omitted from coverage under the ADA.⁸⁸ While a dog must be “trained to do work or perform tasks” to meet the ADA’s definition of a service animal, there are no statutory requirements as to what type of training the dog must receive. Professional training is not required; the animal may be trained by its owner.⁸⁹

c) Emotional support and therapy animals do not qualify

The Department of Justice (DOJ) has determined that “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of (the definition of service animal)”.⁹⁰ The DOJ makes a distinction between psychiatric animals (dogs that are trained to do work or perform a task for a mentally disabled individual) and emotional support animals.⁹¹ So, for example, a dog that has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, or trained

⁸⁴ 28 C.F.R. § 35.104

⁸⁵ TEX. HUM. RES. CODE § 121.002(1)

⁸⁶ 28 C.F.R. § 35.104

⁸⁷ See TEX. HUM. RES. CODE § 121.002(1)

⁸⁸ 28 C.F.R. § 35.104

⁸⁹ Q5 at https://www.ada.gov/regs2010/service_animal_qa.html; *Bronk v. Ineichen*, 54 F.3d 425, 430 (7th Cir.1995)

⁹⁰ 28 C.F.R. § 35.104

⁹¹ *Id.*

to remind a person with a mental illness to take a medication would qualify as a service animal. However, if the dog's mere presence provides comfort or emotional well-being, it would not be considered a service animal under the ADA.⁹²

Likewise, the Texas statute requires a service animal to be specially trained; an emotional support or therapy animal that is not trained to perform any specific task pertaining to a mental disability but whose presence provides comfort and emotional well-being to a disabled person would not qualify as an assistance animal.⁹³

d) Animals in training

Service animals in training do not qualify as service animals under the ADA.⁹⁴ An animal must already be trained before it can be taken into public places.⁹⁵ However, some state and local laws allow animals that are still in training. In Texas service animals in training must be allowed into any public facility if accompanied by an “approved trainer” (the statute does not say approved by whom.)⁹⁶

e) Miniature horses

The ADA also requires public entities to “make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.”⁹⁷ In determining whether a reasonable modification can be made a public entity is required to consider the size, type, and weight of the horse, whether the handler has sufficient control of the horse, whether the horse is housebroken, and whether the horse’s presence would compromise safety at the facility.⁹⁸ Texas does not have a similar provision allowing miniature horses to serve as service or assistance animals.

4. Certification, registration, documentation, and proof

a) Not required by ADA or Texas statute

Neither the ADA nor the Texas statute requires a service animal to be licensed, registered,

⁹² Q3 at https://www.ada.gov/regs2010/service_animal_qa.html

⁹³ See TEX. HUM. RES. CODE § 121.002(1)

⁹⁴ Q6 at https://www.ada.gov/regs2010/service_animal_qa.html

⁹⁵ *Id.*

⁹⁶ See TEX. HUM. RES. CODE § 121.003(i)

⁹⁷ 28 C.F.R. § 36.136(i)

⁹⁸ *Id.*

certified or have any special identification or to wear a special collar, vest, or harness.⁹⁹ Colleges and other entities such as local governments, may offer voluntary registries for service animals.¹⁰⁰ Many communities maintain voluntary registries that serve a public purpose; for example to ensure that emergency personnel know to look for a service dog during an evacuation.¹⁰¹ A city or other entity may not, however, require that a dog be registered as a service animal.¹⁰²

b) Person with animal may only be asked two questions

If it is not readily apparent that an animal is trained to perform tasks for a disabled person¹⁰³ a public accommodation may only ask two questions: 1) is the dog required because of a disability, and 2) what tasks has the dog has been trained to perform.¹⁰⁴ The animal’s handler may not be asked to produce certification or any documentation stating that the dog is, in fact, a service animal or to furnish any proof that the dog has been specially trained.¹⁰⁵ The Texas statute similarly allows only these two questions to be asked.¹⁰⁶

5. Where are service animals allowed to go?

a) All “public accommodations”

The ADA requires all “public accommodations” to allow access to all disabled persons.¹⁰⁷ “Public accommodations” include hotels, schools, colleges, restaurants, bars, theaters, stadiums, shopping centers, grocery stores, shopping centers, museums, attorney’s and other professionals’ offices, hospitals, bus and train depots, zoos, privately owned public transportation, recreational places, and similar places that serve the public.¹⁰⁸

The Texas statute defines “public facility” as including streets, highways, airplanes, trains, buses, boats, hotels, public buildings maintained by the government, retail businesses, office

⁹⁹ See Q9 at https://www.ada.gov/regs2010/service_animal_qa.html TEX. HUM. RES. CODE § 121.002(1)

¹⁰⁰ Q21 at https://www.ada.gov/regs2010/service_animal_qa.html

¹⁰¹ *Id.*

¹⁰² Q20 at https://www.ada.gov/regs2010/service_animal_qa.html

¹⁰³ Examples of “readily apparent” include a dog guiding a blind person or pulling a person’s wheelchair or providing assistance with stability or balance to a person with an observable mobility disability. 28 C.F.R. § 36.302(c)(6)

¹⁰⁴ *Id.*; https://www.ada.gov/service_animals_2010.htm

¹⁰⁵ *Id.*

¹⁰⁶ See TEX. HUM. RES. CODE § 121.003(1).

¹⁰⁷ 42 U.S.C §12182

¹⁰⁸ *Id.* at §12181(7)

buildings, restaurants, schools, college dormitories, commercial establishments, and similar places that serve the public.¹⁰⁹

b) Modifications to policies, practices and procedures are required

Under the ADA public accommodations must “modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”¹¹⁰ However, the ADA does not require public places to admit service animals if doing so would fundamentally alter the nature of a service or program.¹¹¹ Service animals may be excluded from the premises “if [t]he animal is out of control and the animal’s handler does not take effective action to control it or the animal is not housebroken.”¹¹² Also, the public accommodation can require that the service animal “have a harness, leash, or other tether... unless [this] would interfere with the service animal’s [job].”¹¹³ If this is the case, the handler must still have control over the service animal by some other means, such as by “voice control [or] signals.”¹¹⁴

The Texas statute provides that no person with a service animal may be denied admission to a public facility.¹¹⁵ Further, a public facility may not use “a ruse or subterfuge calculated to prevent or discourage a disabled person from using... a public facility.”¹¹⁶

c) Restaurants and hotels

Establishments that prepare or sell food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.¹¹⁷ Also, people with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than others, or charged fees that are not charged to patrons without animals.¹¹⁸ If a business requires a pet deposit it must waive the deposit for service animals.¹¹⁹ However, if a business such as a hotel normally charges guests for damage they cause, a disabled customer may also be charged for damage caused

¹⁰⁹ See TEX. HUM. RES. CODE § 121.002(5)

¹¹⁰ See 28 C.F.R. § 36.302, § 35.136; § 49 CFR 37.3

¹¹¹ Q25 and 26 at http://fclawlib.libguides.com/ld.php?content_id=22722486 For example, a service dog could be restricted from areas in a zoo where the animals on display are the natural prey or predators of dogs and the dog’s presence would cause disruptive or agitated behavior. Or at a boarding school, a service dog could be excluded from a specific area of a dormitory reserved specifically for students with allergies to dog dander.

¹¹² *Id.*

¹¹³ See 28 C.F.R. § 36.302(c)(4), 28 C.F.R. § 35.136(d)

¹¹⁴ *Id.*

¹¹⁵ See TEX. HUM. RES. CODE § 121.003(c).

¹¹⁶ *Id.* at § 121.003(d).

¹¹⁷ See https://www.ada.gov/service_animals_2010.htm

¹¹⁸ *Id.*

¹¹⁹ *Id.*

by a service animal.¹²⁰ Staff are not required to provide care or food for a service animal.¹²¹ The Texas Health and Safety Code provides that a food establishment may not deny a service animal admittance to an area that is open to customers if the animal is accompanied and controlled by the disabled person or, if the animal is in training, by an approved trainer.¹²² A “service animal means a canine that is specially trained or equipped to help a person with a disability.”¹²³ If the person’s disability is not readily apparent the establishment may only ask 1) whether the animal is required because of a disability, and 2) what type of work the animal is trained to perform.¹²⁴ An animal that provides only comfort or emotional support is not a service animal.¹²⁵

d) Churches, synagogues, mosques and other places of worship

Religious organizations and places of worship are expressly exempt from the ADA and may exclude service animals.¹²⁶

e) Private clubs are exempt.

“Private clubs” are exempt from the ADA and may therefore exclude service animals.¹²⁷ The courts consider several factors in determining whether an entity qualifies as a private club.¹²⁸ The Supreme Court has held that if an establishment serves or offers to serve interstate travelers, or if a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce then it does not qualify as a private club.¹²⁹ The Department of Transportation has determined that airline clubs at airports are not private clubs that are exempted from the ADA.¹³⁰

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² TEX. HEALTH & SAFETY CODE § 437.023(a).

¹²³ *Id.* at 437.023(c)

¹²⁴ *Id.* at 437.023(b)

¹²⁵ *Id.* at 437.023(c)

¹²⁶ 42 U.S.C § 12187

¹²⁷ *Id.*

¹²⁸ *See e.g., Tillman v. Wheaton-Havon Recreation Ass’n*, 410 U.S. 431 (1973), *Anderson v. Pass Christian Isles Golf Club, Inc.*, 488 F2d 855 (5th Cir. 1974) (the member degree of control of club operations, the selectivity of the membership selection process, whether substantial membership fees are charged, whether the entity is operated on a non-profit bases, the extent to which the facilities are open to the public, whether the club was created specifically to avoid compliance with the Civil Rights Act.)

¹²⁹ *See Daniel v. Paul*, 395 U.S. 298 (1969)

¹³⁰ *See Federal Register / Vol. 1, No. 213 / Friday, November 1, 1996, page 56409, 56417.*

6. Local animal control laws and the ADA

a) Breed restrictions and bans do not apply to service animals

According to the Justice Department “municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others.”¹³¹ Under the “direct threat” provisions of the ADA, local jurisdictions are required to determine, on a case by case basis, whether a particular service animal can be excluded based on that particular animal’s behavior or history, not on generalized fears about the breed.¹³²

b) Service dogs must comply with local animal control and public health laws

Disabled individuals who have service animals are not exempt from local animal control or public health requirements.¹³³ Therefore, the Texas statute¹³⁴ and municipal ordinances pertaining to dangerous dogs and dog attacks apply to service animals. The Rabies Control Act¹³⁵ also applies to them. Service animals are likewise subject to all local licensing, registration, and vaccination requirements.¹³⁶ However, mandatory registration of animals *as service animals* is not permissible under the ADA.¹³⁷

7. Falsely representing that an animal is a service animal

a) ADA has no penalty

The ADA does not provide any type of civil or criminal penalty for a person who falsely represents that an animal is a service animal. Consequently, service animal fraud has become a widespread problem in this country, with people taking their pets into public places and claiming they are service animals.¹³⁸ This is spurred on by a cottage industry of “service animal” websites like the “National Service Animal Registry” which, for \$64.95 plus \$7.95 shipping and no background check whatsoever, will send a package of ID cards, certificates and patches.¹³⁹

¹³¹ Q24 at http://fclawlib.libguides.com/ld.php?content_id=22722486

¹³² *Id.*

¹³³ *Id.* at Q18

¹³⁴ TEX. HEALTH & SAFETY CODE Ch. 822.

¹³⁵ *Id.* at Ch. 826.

¹³⁶ Q24 at http://fclawlib.libguides.com/ld.php?content_id=22722486

¹³⁷ *Id.* at Q20

¹³⁸ See <https://www.wcpo.com/news/insider/blake-fiona-service-dog-fraud-pet-owners-who-falsely-claim-their-dogs-are-service-dogs-create-havoc>

¹³⁹ See <https://www.nsarco.com/>

b) It is a misdemeanor in Texas

In Texas using a harness or leash to falsely represent that a service animal has been specially trained is a misdemeanor punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves disabled people, to be completed in not more than year.¹⁴⁰ Otherwise, if no harness or leash is used to make the false representation, there is no penalty under Texas law for lying about an animal being a service animal.¹⁴¹

8. Federal agencies do not have to comply with the ADA

Federal agencies such as the Department of Veterans Affairs, Social Security Administration, and IRS are not required to comply with the ADA.¹⁴² Section 504 of the Rehabilitation Act of 1973 protects the rights of people with disabilities to participate in federal programs and services.¹⁴³

9. Penalties and remedies for violations

Under the ADA a disabled person may sue for injunctive relief to stop violations.¹⁴⁴ Monetary damages are not recoverable by an individual but reasonable attorney's fees may be awarded.¹⁴⁵ An individual may also file a complaint with the U.S. Attorney General who is authorized to file suit in cases of "general public importance" or where a "pattern or practice" of discrimination is alleged.¹⁴⁶ In suits brought by the attorney general, monetary damages (but not punitive damages) and civil penalties may be awarded.¹⁴⁷ Civil penalties may not exceed \$75,000 for a first violation or \$110,000 for any subsequent violation.¹⁴⁸

Violation of the Texas public access statute is a misdemeanor punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.¹⁴⁹ Additionally, a disabled person may sue the violator

¹⁴⁰ See TEX. HUM. RES. CODE § 121.006

¹⁴¹ *Id.*

¹⁴² Q36 at http://fclawlib.libguides.com/ld.php?content_id=22722486

¹⁴³ 29 U.S.C § 794;

¹⁴⁴ 42 U.S.C § 12188

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at § 12188(b)(2)(c); 28 C.F.R. Parts 36 and 85; <https://www.ada.gov/fed-reg-monetary-penalties.pdf>

¹⁴⁹ See TEX. HUM. RES. CODE § 121.004

or monetary damages.¹⁵⁰ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”¹⁵¹

10. Liability for damage or injury caused by a service animal

In Texas a disabled person who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.¹⁵² A disabled person who uses an assistance animal for assistance in travel or auditory awareness must keep the animal properly harnessed or leashed and is liable for any injuries caused by a failure to do so.¹⁵³ Under the ADA, if a business such as a hotel normally charges for damage caused by guest, a disabled person may also be charged for damage caused by a service animal.¹⁵⁴

11. Injuring, harassing or failing to properly care for an assistance animal

In Texas it is an offense to intentionally, knowingly or recklessly attack, kill, or injure an assistance animal or to incite or permit another animal to attack, kill or injure an assistance animal.¹⁵⁵ The level of offense ranges from a class A misdemeanor to a third degree felony, depending on whether the assistance animal is attacked, injured or killed.¹⁵⁶ A court may order restitution, including veterinary bills and retraining an injured assistance animal.¹⁵⁷

It is also a misdemeanor to assault, harass, or interfere with, an assistance animal or attempt to do so.¹⁵⁸ The punishment is a fine of not more than \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.¹⁵⁹ Additionally, a person who commits these offenses may be sued for monetary damages, and there is a conclusive presumption of damages of at least \$300.¹⁶⁰

A disabled person who “habitually abuses or neglects to feed or otherwise neglects to properly care for his or her assistance animal is subject to seizure of the animal” under Chapter 821 of the Texas Health and Safety Code.¹⁶¹

¹⁵⁰ *Id.*

¹⁵¹ See TEX. HUM. RES. CODE § 121.004

¹⁵² *Id.* at 121.005

¹⁵³ *Id.* at § 121.005(b)

¹⁵⁴ See www.ada.gov/service_animals_2010.htm

¹⁵⁵ See TEX. PENAL CODE § 42.091.b.

¹⁵⁶ *Id.* at § 42.091(c)

¹⁵⁷ *Id.* at § 42.091(d)

¹⁵⁸ See TEX. HUM. RES. CODE § 121.003(j)

¹⁵⁹ *Id.* at § 121.004(a)

¹⁶⁰ *Id.* at § 121.004(b)

¹⁶¹ *Id.* at § 121.006(b)

D. TRANSPORTATION

1. Airplanes

a) Air Carrier Access Act

The federal Air Carrier Access Act prohibits discrimination on the basis of disability in air travel.¹⁶² Specifically, air carriers “may not discriminate against an otherwise qualified individual on the following grounds: the individual has a physical or mental impairment that substantially limits one or more major life activities, the individual has a record of such an impairment, or the individual is regarded as having such an impairment.”¹⁶³ The Department of Transportation enacts rules to implement and enforce the Air Carrier Access Act.¹⁶⁴ Air carriers are required to allow a service animal to accompany a disabled passenger.¹⁶⁵

b) Texas statute

The Texas statute provides that no person with a service animal may be denied admission to a public facility and includes “airplane” in its definition of “public facility.”¹⁶⁶

c) What is a “disability?”

The definition of “disability” in the Air Carrier Access Act is the same as the definition in the ADA and Fair Housing Act. It means “a physical or mental impairment that, on a permanent or temporary basis, substantially limits one of more major life activities, has a record of such an impairment, or is regarded as having such an impairment.”¹⁶⁷ A “physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of listed body systems or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.¹⁶⁸ It expressly includes “emotional illness.”¹⁶⁹

¹⁶² See 49 C.F.R. § 41705

¹⁶³ *Id.*

¹⁶⁴ See Rules at <http://www.ecfr.gov/cgi-bin/text-idx?SID=ae47679a5dc0b0cdd685abc7e3437dbb&mc=true&node=pt14.4.382&rgn=div5>

¹⁶⁵ See 14 C.F.R. § 382.117(a)

¹⁶⁶ See TEX. HUM. RES. CODE § 121.002(5), § 121.003(b)

¹⁶⁷ 14 C.F.R. § 382.3

¹⁶⁸ See *Id.*

¹⁶⁹ *Id.*

d) What breeds and species are allowed on planes?

The Air Carrier Access Act rules do not specify what species or breeds of animals may qualify as service animals. A service animal may not be excluded from a flight on the basis that it may offend or annoy airline personnel or other travelers.¹⁷⁰ However, an air carrier is never required to accommodate certain unusual service animals such as snakes, other reptiles, rodents and spiders.¹⁷¹ With all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), the carrier must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight’s destination.)¹⁷² If no such factors preclude the animal from traveling in the cabin, the carrier must permit it to do so.¹⁷³

e) Emotional support animals qualify

Under the Air Carrier Access Act an emotional support animal may be a service animal.¹⁷⁴

f) Documentation may be required by airline

As evidence that an animal is a service animal an air carrier “must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances” of the person using the animal.¹⁷⁵ If a passenger wants to travel with an emotional support or psychiatric service animal, an air carrier is not required to accept the animal into the cabin unless the passenger provides current documentation (i.e., no older than one year) on the letterhead of a licensed mental health professional stating the following: 1) the passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders, 2) the passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the destination, 3) the individual providing the assessment is a

¹⁷⁰ *Id* at § 382.117(a)(1)

¹⁷¹ *Id* at § 382.117(e)

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See Id* at § 382.117(d)

licensed mental health professional and the passenger is under his or her care, and 4) the date and type of the professional's license and state where it was issued.¹⁷⁶

On a flight segment scheduled to take 8 hours or more, a carrier may, as a condition of allowing the service animal to travel in the cabin, require the passenger to provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.¹⁷⁷

g) Seating of a service animal on aircraft

An air carrier must permit the service animal to accompany a disabled passenger in any seat unless the animal obstructs and aisle or other area that must remain unobstructed.¹⁷⁸ If a service animal cannot be accommodated at the seat location of the disabled passenger, the carrier must offer the passenger the opportunity to move with the animal to another seat location, if present on the aircraft, where the animal can be accommodated.¹⁷⁹ A carrier must provide a passenger traveling with a service animal either a bulkhead seat or a seat other than a bulkhead seat, as requested by the passenger.¹⁸⁰

h) Rejection of animal must be explained in writing

Whenever an air carrier decides not to accept an animal as a service animal, it must explain the reason for its decision to the passenger and document it in writing.¹⁸¹ A copy of the explanation must be provided to the passenger either at the airport or within 10 days of the incident.¹⁸²

i) Advance notice of an emotional support animal may be required by airline

An airline may require a disabled passenger to provide up to 48 hours' advance notice and check in one hour earlier for transportation of an emotional support or psychiatric service animal in the cabin or a service animal on a flight scheduled to take 8 hours or more.¹⁸³

j) Penalties and Remedies for violations of Air Carrier Access Act

The courts have held that an individual has no private cause of action against an airline for violating the ACAA.¹⁸⁴ The Secretary of Transportation enforces the ACAA through

¹⁷⁶ *Id* at § 382.117(e)

¹⁷⁷ *Id* at § 382.117(a)(2)

¹⁷⁸ *Id* at § 382.117(b)

¹⁷⁹ *Id* at § 382.117(c)

¹⁸⁰ *Id* at § 382.81(c)

¹⁸¹ *Id* at § 382.117(g)

¹⁸² *Id.*

¹⁸³ *See* 14 C.F.R. § § 382.27(c)(8),(9)

¹⁸⁴ *See Lopez v. Jet Blue Airways*, 662 F.3d 593, 596–97 (2d Cir. 2011); *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263, 1269–71 (10th Cir. 2004); *Love v. Delta Air Lines*, 310 F.3d 1347, 1354–59 (11th Cir. 2002).

administrative mechanisms, including an internal dispute resolution program.¹⁸⁵ An aggrieved person may file a complaint with the Secretary who may then investigate and, if a violation is found, compel compliance and impose a civil penalty of up to \$25,000 per violation.¹⁸⁶

k) Penalties and Remedies for violations of Texas access statute

Violation of the Texas public access statute is a misdemeanor punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.¹⁸⁷ Additionally, a disabled person may sue the violator for monetary damages.¹⁸⁸ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”¹⁸⁹

2. Buses, trains, taxis and other transportation services

a) ADA requires modifications of policies, practices or procedures

Under Title III of the ADA public transportation services other than aircraft are required to make reasonable modifications in policies, practices, or procedures for disabled people unless it would “fundamentally alter the nature of” those services.¹⁹⁰ Such public transportation services include “transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.”¹⁹¹ However, public transportation services are not required to make a modification if it would pose a significant risk to the health or safety of others.¹⁹²

b) Texas statute

The Texas statute provides that no person with a service animal may be denied admission to a public facility and includes “common carrier,” “motor vehicle,” “bus,” and “train” in its definition of “public facility.”¹⁹³ Therefore, it includes all business establishments and airplanes.

¹⁸⁵ See 14 C.F.R. § 382.151 *et seq*

¹⁸⁶ See 49 U.S.C. § 46101(a)(1).

¹⁸⁷ See TEX. HUM. RES. CODE § 121.004

¹⁸⁸ *Id.*

¹⁸⁹ See TEX. HUM. RES. CODE § 121.004

¹⁹⁰ See 42 U.S.C. § 12184(b)(2)(A) and 42 U.S.C. § 12182(b)(2)(A)(ii)

¹⁹¹ *Id at* § 12184

¹⁹² *Id at* § 12182(b)(3)

¹⁹³ See TEX. HUM. RES. CODE § 121.002(5), § 121.003(b)

c) What is a “disability”?

“Disability” has the same ADA definition with respect to public transportation services as it does for public accommodations.¹⁹⁴

The Texas statute defines “disability” as “a mental or physical disability, an intellectual or developmental disability, a hearing impairment, deafness, a speech impairment, a visual impairment, post-traumatic stress disorder, or any health impairment that requires special ambulatory devices or services.”¹⁹⁵

d) Service animals are allowed

Transportation services are required to permit service animals to accompany individuals with disabilities under the ADA.¹⁹⁶ The Texas statute also requires transportation services to accept service animals.¹⁹⁷

e) What is a “service animal”?

“Service animal means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”¹⁹⁸

The Texas statute defines “assistance animal” and “service animal” as “a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability.”¹⁹⁹

f) Emotional support animals do not qualify

According to the Department of Transportation, emotional support and therapy animals that are not specially trained and whose presence provide emotional comfort are not service

¹⁹⁴ 49 C.F.R. § 37.3: “Disability” means “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” “Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more (a list of body systems)” and “any mental or psychological disorder (with examples.)”

¹⁹⁵ See TEX. HUM. RES. CODE § 121.002(4)

¹⁹⁶ See 49 C.F.R. § 37.167(d)

¹⁹⁷ See TEX. HUM. RES. CODE § 121.002(5), § 121.003(b)

¹⁹⁸ 49 C.F.R. § 37.3

¹⁹⁹ See TEX. HUM. RES. CODE § 121.002(1)

animals.²⁰⁰ An emotional support animal would also not qualify under the Texas statute since it also requires the animal to be specially trained.²⁰¹

g) Exception for animals that pose a threat or are disruptive

Transportation services may refuse to transport “service animals that that are deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider’s control.”²⁰²

h) Certification, registration, documentation, and proof

Transportation services cannot have a policy requiring riders to provide documentation for their service animal before boarding a bus or train or entering a facility.²⁰³ As with public accommodations a transportation service is allowed to ask a rider only two questions: (1) is the animal a service animal required because of a disability? and (2) what work or task has the animal been trained to perform.²⁰⁴ The Texas statute also permits a transportation service to ask only those two questions.²⁰⁵

i) Penalties and remedies for violations

Transportation services are subject to the enforcement actions as provided in the Department of Justice Regulation implementing Title III of the ADA.²⁰⁶ A disabled person may sue for injunctive relief to stop violations.²⁰⁷ Monetary damages are not recoverable by an individual but reasonable attorney's fees may be awarded.²⁰⁸ An individual may also file a complaint with the U.S. Attorney General who is authorized to file suit in cases of “general public importance” or where a "pattern or practice" of discrimination is alleged.²⁰⁹ In suits brought by the attorney general, monetary damages (but not punitive damages) and civil penalties may be awarded.²¹⁰ Civil penalties may not exceed \$75,000 for a first violation or \$110,000 for any subsequent violation.²¹¹

²⁰⁰ See P. 2-17 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²⁰¹ See TEX. HUM. RES. CODE § 121.002(1)

²⁰² See P. 2-17 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See TEX. HUM. RES. CODE § 121.003(1)

²⁰⁶ See 49 C.F.R. § 37.11

²⁰⁷ 42 U.S.C § 12188

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at § 12188(b)(2)(c); 28 C.F.R. Parts 36 and 85; <https://www.ada.gov/fed-reg-monetary-penalties.pdf>

Violation of the Texas public access statute is a misdemeanor punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.²¹² Additionally, a disabled person may sue the violator for monetary damages.²¹³ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”²¹⁴

3. Passenger vessels, including cruise ships

a) Modifications of policies, practices or procedures required

Under the ADA Passenger vessel owner and operators (PVO’s) must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to accommodate individuals with disabilities, unless such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.²¹⁵

b) What is a disability?

“Disability” has the same ADA definition with respect to public transportation services as it does for public accommodations.²¹⁶ The Texas statute defines “disability” as “a mental or physical disability, an intellectual or developmental disability, a hearing impairment, deafness, a speech impairment, a visual impairment, post-traumatic stress disorder, or any health impairment that requires special ambulatory devices or services.”²¹⁷

c) Service animals are allowed

A passenger vessel owner/operator must allow a service animal to accompany a passenger with a disability.²¹⁸ The animal must be allowed into all locations that passengers can use, including in lifeboats.²¹⁹ The passenger must be allowed to bring food for the animal onto

²¹² See TEX. HUM. RES. CODE § 121.004

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See 49 C.F.R. § 39.21

²¹⁶ *Id.* at § 39.3: “Disability” means “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” “Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more the following body systems: (a list of body systems)” and “any mental or psychological disorder (with examples.)”

²¹⁷ See TEX. HUM. RES. CODE § 121.002(4)

²¹⁸ See 49 C.F.R. § 39.91(a)

²¹⁹ *Id.* at § 39.91(b)

the ship at no additional charge and the ship must provide refrigeration space for the animal's food.²²⁰

The Texas statute provides that no person with a service animal may be denied admission to a public facility and includes "boat" in its definition of "public facility."²²¹

d) What is a "service animal"?

According to the Department of Transportation, for purposes of accompanying a disabled person on a passenger vessel a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other types of animals (e.g., cats, primates) are not considered service animals...."²²²

The Texas statute defines "assistance animal" and "service animal" as "a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability."²²³

e) Exception for animals that are not housebroken or not under control

A passenger vessel owner/operator may decline to carry a service animal "if it is not housebroken or if it is not under control of its user."²²⁴

f) Emotional support animals do not qualify

An emotional support animal that is not specially trained to perform tasks for a disabled person does not qualify as a service animal under the Department of Transportation's definition and passenger vessels are not required to accept them onto a ship.²²⁵ An emotional support animal would also not qualify under the Texas statute since it also requires the animal to be specially trained.²²⁶

g) Acceptable documentation or proof

Under the ADA a passenger vessel "must accept the following as evidence that an animal is a service animal: identification cards, other written documentation, presence of

²²⁰ *Id* at § 39.91(c)

²²¹ *See* TEX. HUM. RES. CODE § 121.002(5)

²²² *See* P.10-13 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²²³ *See* TEX. HUM. RES. CODE § 121.002(1)

²²⁴ *See* P.2 at https://cms.dot.gov/sites/dot.gov/files/docs/PVGuidance2_3_11.pdf

²²⁵ *Id* at P.1

²²⁶ *See* TEX. HUM. RES. CODE § 121.002(1)

harnesses, tags, and/or the credible verbal assurances of a passenger with a disability using the animal.”²²⁷

The Texas statute allows a staff member of a public facility (which includes a “boat”) to ask only two questions: (1) whether the service animal is required because the person has a disability; and (2) what type of work or task the service animal is trained to perform.²²⁸

h) Penalties and remedies for violations

Complaints against passenger vessel owners/operators for violations of the rules are investigated by the Department of Transportation.²²⁹ The DOT may refer any matters concerning noncompliance to the Department of Justice which may file suit against the POV.²³⁰

Violation of the Texas public access statute is a misdemeanor punishable by a fine up to \$300 and 30 hours of community service working for an entity that serves people with disabilities, to be completed in not more than one year.²³¹ Additionally, a disabled person may sue the violator for monetary damages.²³² There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”²³³

E. WORKPLACE

1. The Americans with Disabilities Act

While Title III (public access) of the ADA requires a public accommodation to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability, Title I (employment) of the ADA does not.²³⁴ Instead it requires employers to make “reasonable accommodations” for a disabled person.²³⁵ The Equal Opportunity Employment Commission (EEOC) was given authority to promulgate rules implementing Title I.²³⁶

²²⁷ See 49 C.F.R. § 39.91(d)

²²⁸ See TEX. HUM. RES. CODE § 121.003(l)

²²⁹ See 49 C.F.R. § 39.109

²³⁰ *Id.*

²³¹ See TEX. HUM. RES. CODE § 121.004

²³² *Id.*

²³³ See TEX. HUM. RES. CODE § 121.004

²³⁴ See generally 42 U.S.C § 12112

²³⁵ *Id.* at § 12112(b)(5)

²³⁶ See 42 U.S.C § 12116

2. Texas workplace statute

The Texas Labor Code requires employers to “make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability” unless the accommodation would “impose an undue hardship” on the employer.²³⁷

3. Statutes only apply to employers with 15 or more employees.

Title I of the ADA only applies to employers with 15 or more employees.²³⁸ It does not apply to the U.S. government, Indian tribes, or private membership clubs.²³⁹ Title II of the ADA applies to state and local government employers.²⁴⁰ The Texas statute also only applies to employers with 15 or more employees.²⁴¹

4. What is a “disability”?

The same definition of disability that applies to access to public places under Title III applies to employees and job applicants under Title I.²⁴² “Disability” means “a physical or mental impairment that substantially limits one or more major life activities..., a record of such an impairment, or being regarded as having such an impairment.”²⁴³ “Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”²⁴⁴ Major life activities also include “major bodily functions.”²⁴⁵ Texas has an identical statutory definition of disability.²⁴⁶

5. The disabled person must be qualified for the job

Under the ADA a disabled person must be qualified for the job.²⁴⁷ The person must have the requisite skills, experience, education, and must be able to perform the job’s essential functions if given reasonable accommodations.²⁴⁸ Texas similarly requires a disabled person to be qualified in order to receive reasonable accommodations.²⁴⁹

²³⁷ See TEX. LABOR CODE § 21.128(a)

²³⁸ See 42 U.S.C § 12111(5)(A)

²³⁹ *Id.* § 12111(5)(B)

²⁴⁰ See 42 U.S.C § 12131

²⁴¹ See TEX. LABOR CODE § 21.002(8)(A)

²⁴² See 42 U.S.C § 12102

²⁴³ *Id.* at § 121102(1)

²⁴⁴ *Id.* at § 121102(2)

²⁴⁵ *Id.*

²⁴⁶ See TEX. LABOR CODE § 21.002(6)

²⁴⁷ 29 CFR § 1630.4;

²⁴⁸ *Id.* at §1630.2(m) Appendix

²⁴⁹ See TEX. LABOR CODE § 21.128(a)

6. Employers must make reasonable accommodations

“Reasonable accommodation” means *inter alia* “[m]odifications...to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position” and “[m]odifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment.”²⁵⁰ Unless it causes undue hardship or threat to health, safety and welfare.

The ADA requires employers to provide a “reasonable accommodation” to an otherwise qualified person who meets the definition of disability unless it would result in an “undue hardship”²⁵¹ or a “direct threat” to the health, safety, and welfare of the individual or others.²⁵² An “undue hardship” means “significant difficulty or expense...when considered in light of” factors such as the nature and cost of the accommodation, the employer’s financial resources, the number of employees, the type of operation run by the employer, and the impact the accommodation would have on the employer.²⁵³

Under the Texas statute an employer is not required to make a reasonable workplace accommodation if it will cause an “undue hardship,” which is determined by considering “reasonableness of the cost of any necessary workplace accommodation and the availability of alternatives or other appropriate relief.”²⁵⁴

7. Allowing a service animal is a reasonable accommodation

According to the EEOC “it may also be a reasonable accommodation to permit an individual with a disability the opportunity to provide and utilize equipment, aids or services that an employer is not required to provide as a reasonable accommodation. For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee.”²⁵⁵ The EEOC has said that allowing a disabled employee to take paid leave for training a service animal may be a reasonable accommodation.²⁵⁶

²⁵⁰ 29 CFR § 1630.2(o)

²⁵¹ *Id* at § 1630.9

²⁵² *Id* at § 1630.15(b)(2); § 1630.2(r)

²⁵³ *Id* at § 1630.2(p)

²⁵⁴ *See* TEX. LABOR CODE § 21.128(b)

²⁵⁵ 29 CFR § 1630.2(o)(1) Appendix

²⁵⁶ *See* No.16 at <https://www.eeoc.gov/policy/docs/accommodation.html#other>

8. What kinds of animals qualify?

Title I of the ADA and the EEOC implementation rules do not state what types of animals qualify for purposes of making a reasonable accommodation in the workplace. There is no requirement that an animal be specially trained to perform tasks as in Title III (public accommodations.) Arguably any species or breed of animal that is needed by a disabled person to deal with a physical or mental impairment that substantially limits one or more major life activities could qualify. This leaves open the possibility that an emotional support animal whose presence provides comfort to a disabled person but is not trained to perform any particular task could qualify as a reasonable accommodation.

9. State employees get paid leave for assistance dog training

A disabled employee of the State of Texas is entitled to a paid leave of absence up to 10 days to attend a training program to acquaint him or her with an assistance dog.²⁵⁷

10. Employees at food establishments

The Food and Drug Administration Code prohibits food employees from handling animals except for service animals.²⁵⁸ Disabled employees may handle or care for their service animals only if they thoroughly wash their hands for at least 20 seconds afterwards “using soap, water, and vigorous friction on surfaces of the hands, followed by rinsing and drying as per Section 2-301.12.”²⁵⁹

11. Religious entities

A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion and may require that all applicants and employees conform to the religious tenets of such organization.²⁶⁰ Therefore, a religious entity would not be required to accommodate a disabled person with a service animal who is not a member of that religion. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, on the basis of a disability.²⁶¹

²⁵⁷ See TEX. GOV. CODE § 661.910

²⁵⁸ See FDA Code § 2-403.11(a)

²⁵⁹ See *Id* at § 2-403.11(b) and § 6-501.115

²⁶⁰ See 29 CFR § 1630.16(a) Appendix

²⁶¹ *Id.*

12. Inquiries and examinations are permitted

An employer may make inquiries into the ability of a job applicant or employee to perform job-related functions and/or may ask them to describe or demonstrate how, with reasonable accommodation, they will be able to perform job-related functions.²⁶² This would include asking an employee to document or show how an animal would help him or her do the job. An employer may also require a medical examination or inquiry into the ability of an employee to do the work.²⁶³

13. Penalties and remedies for violations

The ADA is enforced under the same procedures applicable to race, color, sex, national origin, and religious discrimination under the Civil Rights Act.²⁶⁴ Complaints against employers are filed with the EEOC or designated human rights agencies.²⁶⁵ If no violation of the ADA is found the complainant will be given a Notice of Right to Sue.²⁶⁶ If a violation is found the EEOC will attempt to reach a voluntary settlement with the employer.²⁶⁷ If a settlement cannot be reached and the EEOC does not file suit the complainant will be given a Notice of Right to Sue.²⁶⁸ Available remedies include hiring, reinstatement, promotion, back pay, reasonable accommodation, attorney's and expert witness fees.²⁶⁹ Compensatory and punitive damages are also available in cases of intentional discrimination or where an employer fails to make a good faith effort to provide a reasonable accommodation.²⁷⁰ There are statutory caps on recoverable damages.²⁷¹

The Texas statute provides an administrative procedure for enforcement of the Texas Labor Code.²⁷² The Texas Workforce Commission may also file a civil suit against an employer and the complainant may intervene in such a lawsuit.²⁷³ The complainant may also request from

²⁶² See 29 CFR § 1630.14(a) and (c) Appendix

²⁶³ See *Id* at § 1630.14(c) Appendix

²⁶⁴ See <https://www.eeoc.gov/eeoc/publications/adaqa1.cfm>

²⁶⁵ *Id.*

²⁶⁶ See <https://www.eeoc.gov/employees/charge.cfm>

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ See <https://www.eeoc.gov/eeoc/publications/adaqa1.cfm>

²⁷⁰ *Id.*

²⁷¹ See <https://www.eeoc.gov/employees/remedies.cfm> The caps range from \$50,000 to \$300,000, depending on the size of the employer

²⁷² See TEX. LABOR CODE § 21.201 *et seq*

²⁷³ *Id* at § 21.251. In 2015 the Texas Workforce Commission took over the role of the Texas Commission on Human Rights. See § 301.153(c)

the Texas Workforce Commission a right to file suit.²⁷⁴ If the court finds that an employer engaged in an unlawful employment practice it may enjoin the employer from committing the unlawful practice and may order the hiring or reinstatement of the disabled person with or without back pay.²⁷⁵ If the conduct was intentional the court may award compensatory and punitive damages.²⁷⁶ Compensatory damages may include damages for mental anguish, emotional pain, inconvenience and loss of enjoyment of life, capped at \$50,000 to \$300,000, depending on the number of employees the employer has.²⁷⁷

F. EDUCATION

1. Schools, colleges and universities are “public accommodations”

Nurseries, elementary, secondary, undergraduate, and postgraduate private schools, and other places of education are “public accommodations” and therefore must comply with all of the requirements of Title III of the ADA.²⁷⁸

2. Grades K-12 schools

Additionally, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act allow a student to use an animal that does not meet the ADA definition of a service animal if that student’s Individual Education Plan (IEP) or Section 504 team decides that the animal is necessary for the student to receive a free and appropriate education.²⁷⁹ Whether a student will be allowed to have an emotional support animal that is not specially trained would be decided by the IEP or Section 504 team.

3. Texas statute

The Texas non-discrimination statute also requires “a college dormitory or other educational facility” to admit service animals.²⁸⁰

²⁷⁴ *Id* at § 21.252

²⁷⁵ *Id* at § 21.258

²⁷⁶ *Id* at § 21.2585

²⁷⁷ *Id.*

²⁷⁸ *See* 42 U.S.C §12181(7)(j); 42 U.S.C 12182; and “PUBLIC ACCOMMODATIONS” *supra*.

²⁷⁹ *See* 20 U.S.C § 1400 *et seq*; 29 U.S.C. § 794 *et seq*; *Sullivan v. Vallejo City Unified School District* 731 F. Supp. 947 (E.D. Cal. 1990); *Cave v. East Meadow Union Free School District*, 514 F.3d 240 (2d Cir. 2008).

²⁸⁰ *See* TEX. HUM. RES. CODE § 121.002(5), § 121.003(c)

G. HOUSING

1. U.S. Fair Housing Act²⁸¹

The federal Fair Housing Act (FHA) prohibits discrimination on the basis of disability in all types of housing transactions, including sales, rentals, brokerage, and other residential real estate-related transactions.²⁸² Discrimination includes refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.²⁸³ The Secretary of Housing and Urban Development (HUD) is responsible for administering the Fair Housing Act.²⁸⁴ According to HUD reasonable accommodations include allowing a disabled person to use an assistance animal in housing.²⁸⁵

2. Texas Fair Housing Act²⁸⁶

The Texas Fair Housing Act “provides for fair housing practices in this state” and “provide[s] rights and remedies substantially equivalent to those granted under federal law.”²⁸⁷ The Texas anti-discrimination statute also provides that a disabled person with a service animal “is entitled to full and equal access to all housing accommodations...and may not be required to pay extra compensation or make a deposit for the animal.”²⁸⁸

3. What is a “disability”?

Under both the federal and Texas Fair Housing Acts “disability” means a mental or physical impairment that substantially limits at least one major life activity, more of a person’s major life activities, a record of having such an impairment, or being regarded as having such an impairment.²⁸⁹

4. Reasonable accommodation required

Under the Federal FHA a housing provider must make an exception to a “no pets” rule to permit a disabled person to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and

²⁸¹ 42 U.S.C. § 3601 *et seq*

²⁸² *Id* at § 3604 – 3606.

²⁸³ *Id* at § 3604(f)(3)(b)

²⁸⁴ *Id* at § 3608

²⁸⁵ See https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

²⁸⁶ TEX. PROP. CODE, Chapter 301

²⁸⁷ TEX. PROP. CODE § 301.002

²⁸⁸ See TEX. HUM. RES. CODE § 121.003(h).

²⁸⁹ See 42 U.S.C. § 3602(h); TEX. PROP. CODE § 301.003(6).

administrative burden or would fundamentally alter the nature of the housing provider's services.²⁹⁰ The housing provider may deny an assistance animal if: 1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or 2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.²⁹¹ Breed, size, and weight limitations may not be applied to an assistance animal.²⁹² A pet deposit may not be required for an assistance animal.²⁹³

The Texas Fair Housing Act provides that “[a] person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with the buyer or renter.”²⁹⁴ Discrimination includes “a refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the person equal opportunity to use and enjoy a dwelling.”²⁹⁵

5. What kinds of animals qualify?

a) Does not have to be a dog

HUD has stated, “while dogs are the most common type of assistance animal, other animals can also be assistance animals.”²⁹⁶ The Texas statute also does not mention service animals or what type of animal would be a “reasonable accommodation.”

b) Emotional support animals are included

According to HUD an assistance animal “is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”²⁹⁷ The federal FHA does not require that the animal be specially trained.²⁹⁸

Since the Texas statute does not mention service or assistance animals it leaves open the

²⁹⁰ See https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ TEX. PROP. CODE § 301.025(a)

²⁹⁵ *Id.* at § 301.025(c)(2)

²⁹⁶ See www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF

²⁹⁷ *Id.*

²⁹⁸ *Id.*

possibility that emotional support animals would be a “reasonable accommodation.”

6. Documentation may be requested

The federal FHA does not require an assistance animal to be certified or specially trained.²⁹⁹ A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking an accommodation has a disability or a disability-related need for an assistance animal.³⁰⁰ However, a provider may ask individuals whose disabilities are not readily apparent or known to the provider to submit reliable documentation of a disability and the need for an assistance animal.³⁰¹ For example, the housing provider may ask a person who is seeking an accommodation for an emotional support animal to provide documentation from a physician, psychiatrist, social worker or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.³⁰² Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.³⁰³

7. Religious entities and private organizations

The Federal Fair Housing Act does not prohibit religious organizations, associations, societies, religious organizations from giving preference to persons of the same religion.³⁰⁴ Nor does it prohibit a private club not open to the public from giving preference to its members.³⁰⁵

The Texas Fair Housing Act has the same provision for religious entities.³⁰⁶

8. Penalties and remedies for violations

a) Federal Fair Housing Act

An individual can file a complaint with HUD within one year.³⁰⁷ HUD then has a

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *See* 42 U.S.C. § 3607

³⁰⁵ *Id.*

³⁰⁶ *See* TEX. PROP. CODE § 304.042

³⁰⁷ *See* 42 U.S.C. § 3607

duty to investigate.³⁰⁸ It generally tries to mediate the case through a conciliation process.³⁰⁹ HUD may refer the case to a state or local public agency.³¹⁰ If no conciliation agreement is reached and HUD finds “reasonable cause” to support the alleged discrimination it may issue a charge of discrimination and the complainant can elect to have the Justice Department file suit on his or her behalf but in the name of the United States.³¹¹ The complainant has the right to have the case heard in federal court or before an administrative law judge.³¹² An ALJ can award the complainant actual damages, injunctive relief, and impose civil penalties.³¹³ A complainant has the choice of not waiting until HUD completes its investigation and filing a private suit.³¹⁴ If he or she prevails court may award actual and punitive damages, injunctive relief, and attorney’s fees.³¹⁵ A court may assess a civil penalty in an amount up to \$50,000 for the first violation and \$100,000 for any subsequent violation.³¹⁶

b) Texas Fair Housing Act

A person who believes that the reasonable accommodation requirement of the Texas Fair Housing Act has been violated may file a complaint with the Texas Workforce Commission no later than one year after the violation.³¹⁷ The Commission investigates the complaint and must reach a decision within 100 days.³¹⁸ The Commission shall attempt to “conciliate” the complaint.³¹⁹ The Commission may authorize a civil action by the Texas Attorney General.³²⁰ If the Commission finds reasonable cause that a violation has occurred it may issue a “charge.”³²¹ After a hearing the Commission may order relief, including actual damages, attorney’s fees, injunctive relief and civil penalties.³²² The Commission may authorize the attorney general to file suit.³²³ An individual may also file suit in district court no later than two years after the occurrence

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id* at § 3612

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id* at § 3613

³¹⁵ *Id.*

³¹⁶ *Id* at § 3614

³¹⁷ *See* TEX. PROP. CODE § 301.081

³¹⁸ *Id* at § 301.083(b).

³¹⁹ *Id* at § 301.085(a)

³²⁰ *Id* at § 301.086(a)

³²¹ *Id* at § 301.089

³²² *Id* at § 301.112

³²³ *Id*

and, on request, may receive a court-appointed attorney.³²⁴ If the court finds a discriminatory housing practice has occurred the court may award actual and punitive damages, reasonable attorney's fees and injunctive relief.³²⁵ In any suit brought under the Texas Fair Housing Act the court may award reasonable attorney's fees to the prevailing party.³²⁶

H. PLANS FOR SERVICE ANIMALS IN A DISASTER

1. PETS Act

The federal Pets Evacuation and Transportation Standards Act (PETS) authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to develop emergency preparedness plans and ensure that state and local emergency plans take into account the needs of individuals with pets and service animals during a major disaster or emergency.³²⁷

2. Texas statute

The Texas Division of Emergency Management (a division of the Department of Public Safety) is required to assist cities and counties in developing plans for the humane evacuation, transport and sheltering of service animals and household pets in a disaster.³²⁸

³²⁴ *Id* at § 301.151-152

³²⁵ *Id* at § 301.153

³²⁶ *Id* at § 301.156

³²⁷ 42 U.S.C § 5196(e)(4)

³²⁸ *See* TEX. GOV. CODE § 418.043(11)

Quick Reference Guide

	Service Animal	Emotional Support Animal
	Animal that is individually trained to perform work or tasks for the benefit of a person with a disability. Training can be by owner.	Animal that provides comfort or support for a person with a disability, but does not have any individualized training to perform work or tasks.
Places open to the public	Dogs and miniature horses only. Facility may not ask for documentation; it may only ask if it is a service animal and what it is trained to do. Must be housebroken and under control. Facility not required to fundamentally alter program/ service. No registration or certification required.	Not allowed
Housing	Any animal can qualify. Housing provider may ask for reasonable documentation of disability and the need for a service animal. Animal does not need to be registered or certified.	Any animal can qualify. Housing provider may ask for reasonable documentation of a disability and the need for an emotional support animal. Animal does not need to be registered or certified.
Airplanes	Any animal except insects, snakes, rodents, etc. Also must not pose risk to health, safety, welfare of others or disrupt flight. Doesn't matter if other passengers are annoyed. Airline must accept id cards, tags, other written documentation, presence of harnesses, tags, or credible verbal assurances.	Any animal except insects, snakes, rodents, etc. Also must not pose risk to health, safety, welfare of others or disrupt flight. Doesn't matter if animal annoys others. Airline may ask for a signed letter from licensed mental health professional, not more than 1 year old.
Buses, Trains, Taxis, etc.	Dogs only. But must not pose risk to health, safety, welfare. Must be under control and not disruptive.	Not allowed

	Service Animal	Emotional Support Animal
Workplace	Arguably any animal allowed as a “reasonable accommodation” if not undue hardship on employer or threat to health safety, or welfare. Employer may ask for documentation.	Arguably any animal allowed as a “reasonable accommodation” if not undue hardship on employer or threat to health safety, or welfare. Employer may ask for documentation
Ships and Boats	Dogs only. Must be housebroken and under control. Ship must accept ID cards, tags, other written documentation, presence of harnesses, tags, or credible verbal assurances.	Not allowed
Education (all schools and colleges)	Dogs and miniature horses only. School may not ask for documentation; it may only ask if it is a service animal and what it is trained to do. Must be housebroken and under control. School not required to fundamentally alter program/ service. No registration or certification required.	Not allowed