

SERVICE, ASSISTANCE, AND EMOTIONAL SUPPORT ANIMALS

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A. DISABILITY

1. Animal owner must be disabled

All federal and Texas laws pertaining to service, assistance, and emotional support animals require that the animal owner be either *physically or mentally disabled*. If an owner is not mentally disabled then the animal is not a qualified emotional support animal.

This is the least known and most commonly violated rule by people who claim their pets are “emotional support animals.” If a person is not physically or mentally disabled, then no law ever requires the animal to be admitted or the person to be accommodated.

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

¹42 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 means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals.³¹ A service dog must not pose a direct threat to health or safety of others, cause a significant disruption or behave badly and must be able to fit on the disabled person’s lap or floor space without encroaching on other passengers.”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. § 382.3

³² *Id* at § 382.77, 79

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, except as to housing.

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” can be: 1) an individually trained dog, or 2) a “support animal.”³⁵ A support animal may be a “common household animal,” such as a dog, cat, rabbit or fish, or it can be a “unique animal,” such as a monkey or kangaroo.³⁶ A support animal can be an emotional support animal and can be trained or untrained.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 individually 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.

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

³⁴ *Id.*

³⁵ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNCI-28-2020.pdf>

³⁶ *Id.*

³⁷ *Id.*

Air Carrier Access Act (airplanes): The rules enacted by the Department of Transportation expressly exclude emotional support animals.³⁸

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. § 382.3

⁴⁰ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNCI-28-2020.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 these things is required under any federal 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=CNe8KP9itICFQqraQodjroHYw>, http://usdogregistry.org/?gclid=CPqJ4M_9itICFQEIaOodA8QDLg; <https://www.nsarco.com/>; <http://registerservicedogs.com/?gclid=CMe4kZj-itICFQaHaOodIAIHZA>

⁴⁶ *Id*

⁴⁷ See TEX. HUM. RES. CODE § 121.002(1); Q9 at https://www.ada.gov/regs2010/service_animal_qa.html; 14 C.F.R. § 382.3; However, these things may be considered by an airline in determining whether a dog is a service animal. See 14 C.F.R. § 382.3

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 or the Air Carrier Access Act.⁵⁶ An animal must already be trained before it can be taken into public places or on an airplane.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; 14 C.F.R. § 382.3

⁵⁷ *Id.*

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

⁵⁹ See <https://www.theguardian.com/lifeandstyle/2019/aug/12/fake-emotional-support-animals-service-dogs>

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 Ch. 121

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 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 or service 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 service 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 inns/motels/bed & breakfasts/hotels (except those resided in by the owner and having five or fewer rooms for rent), 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 cause

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., 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://apnews.com/article/1a28f8e528424fdca2040ea8139e3014>

¹³⁹ See <https://www.nsarco.com/>

b) It is a misdemeanor in Texas to falsely use harness or leash

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

for 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 and specific learning disabilities.”¹⁶⁹

¹⁶² See 49 USC § 41705(a)

¹⁶³ *Id.*

¹⁶⁴ See Rules at https://www.ecfr.gov/cgi-bin/text-idx?SID=ae47679a5dc0b0cdd685abc7e3437dbb&mc=true&node=pt14.4.382&rgn=div5#se14.4.382_173

¹⁶⁵ See 14 C.F.R. § 382.72

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) Only individually trained dogs are allowed—no emotional support animals.

“Service animal means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”¹⁷⁰ Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals.¹⁷¹ A dog may have a “service animal handler” who is not the disabled person.¹⁷² An airline may not prohibit a service dog based on the dog’s breed or the fact that it may annoy or offend other passengers or personnel.¹⁷³ No more than two service dogs per disabled person are allowed.¹⁷⁴

e) Airline may require completed DOT forms

An airline may require a current completed DOT “Service Animal Air Transportation Form.”¹⁷⁵ If the flight will last over 8 hours, the airline may require a current “DOT Service Animal Relief Attestation Form” confirming that service dog will not need to relieve itself or can relieve itself in a way that does not create a health or sanitation issue on the flight.¹⁷⁶

f) How airline may determine if dog qualifies as a service animal

An airline may determine that a dog qualifies as a service animal in one of three ways: 1) Ask if the dog is needed because of a disability (but not the nature of the disability) and what work or tasks has the dog been trained to perform, 2) Observe the dog’s behavior to see if it behaves properly and does not growl, urinate, jump on people, etc. (dogs that do these things may be prohibited even if they are specially trained), and 3) Look for physical indicators, such as a harness or vest.¹⁷⁷

g) Airline may require harness or leash

An airline may require the dog to be harnessed, leashed “or otherwise tethered” at all times while on the airplane or in areas of the airport controlled by the airline.¹⁷⁸

h) Airline may not require a waiver of liability and must provide relief areas

An airline may not require a disabled passenger to sign a waiver of liability for loss, injury to or death of a service dog.¹⁷⁹ Every airline, “in cooperation with the airport and in consultation with local

¹⁷⁰ *Id*

¹⁷¹ *Id*

¹⁷² *Id.*

¹⁷³ *Id* at § 382.72

¹⁷⁴ *Id* at § 382.74

¹⁷⁵ *Id* at § 382.75(a)

¹⁷⁶ *Id* at § 382.75(b)

¹⁷⁷ *Id* at § 382.73

¹⁷⁸ *Id*

¹⁷⁹ *Id* at § 382.35(b)

animal training organization(s) must provide relief areas” for service dogs at the airport.¹⁸⁰

i) Airline may require 48 hours advance notice

An airline may require disabled passengers with service dogs to provide up to 48 hours advance notice if the reservation is made more than 48 hours prior to departure.¹⁸¹ Alternatively, it may require the passenger to provide the forms discussed in e) above at the departure gate.¹⁸²

j) Airline may not require passenger with service dog to check-in physically

An airline may not require a disabled passenger with a service dog to check-in physically at the airport, rather than use the online check-in available to the public.¹⁸³

k) Placement and seating of service dogs

If requested, an airline must provide a person with a service dog either a bulkhead seat or a seat other than a bulkhead seat.¹⁸⁴ An airline must allow a service dog to sit on the disabled person’s lap or foot space unless it would be inconsistent with FAA safety requirements or encroach on another passenger’s space.¹⁸⁵ Before refusing to allow a service dog that can’t meet these requirements, the airline must offer the passenger the opportunity to move to another seat where the dog may be accommodated, if available.¹⁸⁶ However, the airline is not required to reseat other passengers.¹⁸⁷ If there are no other alternatives, the airline must allow the service dog to ride in the cargo hold, free of charge.¹⁸⁸

l) Airline may charge for damage caused by service dogs

An airline may charge for damage caused by service dogs as long as it charges passengers without disabilities for similar kinds of damage.¹⁸⁹

m) Airline may refuse to allow service dogs only under limited circumstances

An airline may refuse to allow a service dog if it poses a direct threat to health or safety of others, causes a significant disruption or behaves badly [see f) above], or would violate the health or safety requirements of the U.S. or foreign government, or the passenger has not completed the required forms [see e) above].¹⁹⁰ An airline may not impose additional requirements unless required by the FAA, TSA,

¹⁸⁰ *Id* at § 382.51(a)(5)

¹⁸¹ *Id* at § 382.27(b)(3)

¹⁸² *Id.*

¹⁸³ *Id* at § 382.76

¹⁸⁴ *Id* at § 382.81(c)

¹⁸⁵ *Id* at § 382.77

¹⁸⁶ *Id*

¹⁸⁷ *Id*

¹⁸⁸ *Id*

¹⁸⁹ *Id* at § 382.78

¹⁹⁰ *Id* at § 382.79

other federal agencies or a foreign government.¹⁹¹

n) 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.¹⁹² The Secretary of Transportation enforces the ACAA through administrative mechanisms, including an internal dispute resolution program.¹⁹³ 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.¹⁹⁴

o) 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.¹⁹⁵ Additionally, a disabled person may sue the violator for monetary damages.¹⁹⁶ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”¹⁹⁷

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.¹⁹⁸ 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.”¹⁹⁹ 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.²⁰⁰

¹⁹¹ *Id* at § 382.80

¹⁹² *See Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011); *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263, 1269-71 (10th Cir. 2004); *Love v. Delta Airlines*, 310 F.3d 1347, 1354-59 (11th Cir. 2002).

¹⁹³ *See* 14 C.F.R. § 382.151 *et seq*

¹⁹⁴ *See* 49 U.S.C. § 46101(a)(1)

¹⁹⁵ *See* TEX. HUM. RES. CODE § 121.004

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See* 42 U.S.C. § 12184(b)(2)(A)

¹⁹⁹ *Id* at § 12184

²⁰⁰ *Id* at § 12182(b)(3)

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.”²⁰¹ Therefore, it includes all business establishments and airplanes.

c) What is a “disability”?

“Disability” has the same ADA definition with respect to public transportation services as it does for public accommodations.²⁰²

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.”²⁰³

d) Service animals are allowed

Transportation services are required to permit service animals to accompany individuals with disabilities under the ADA.²⁰⁴ The Texas statute also requires transportation services to accept service animals.²⁰⁵

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.”²⁰⁶

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.”²⁰⁷

²⁰¹ See TEX. HUM. RES. CODE § 121.002(5), § 121.003(b)

²⁰² 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.)”

²⁰³ See TEX. HUM. RES. CODE § 121.002(4)

²⁰⁴ See 49 C.F.R. § 37.167(d)

²⁰⁵ See TEX. HUM. RES. CODE § 121.002(5), § 121.003(b)

²⁰⁶ 49 C.F.R. § 37.3

²⁰⁷ See TEX. HUM. RES. CODE § 121.002(1)

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 animals.²⁰⁸ An emotional support animal would also not qualify under the Texas statute since it also requires the animal to be specially trained.²⁰⁹

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.”²¹⁰

h) Certification, registration, documentation, and proof

Transportation services may not require riders to provide documentation for their service animal before boarding a bus or train or entering a facility.²¹¹ 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?²¹² The Texas statute also permits a transportation service to ask only those two questions.²¹³

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.²¹⁴ A disabled person may sue for injunctive relief to stop violations.²¹⁵ Monetary damages are not recoverable by an individual but reasonable attorney's fees may be awarded.²¹⁶ 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.²¹⁷ In suits brought by the attorney general, monetary damages (but not punitive damages) and civil penalties may be awarded.²¹⁸ Civil penalties may not exceed \$75,000 for a first violation or \$110,000 for any subsequent violation.²¹⁹

²⁰⁸ See P. 2-17 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²⁰⁹ See TEX. HUM. RES. CODE § 121.002(1)

²¹⁰ See P. 2-17 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²¹¹ *Id.*

²¹² *Id.*

²¹³ See TEX. HUM. RES. CODE § 121.003(1)

²¹⁴ See 49 C.F.R. § 37.11

²¹⁵ 42 U.S.C § 12188

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *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.²²⁰ Additionally, a disabled person may sue the violator for monetary damages.²²¹ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”²²²

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.²²³

b) What is a disability?

“Disability” has the same ADA definition with respect to public transportation services as it does for public accommodations.²²⁴ 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.”²²⁵

c) Service animals are allowed

A passenger vessel owner/operator must allow a service animal to accompany a passenger with a disability.²²⁶ The animal must be allowed into all locations that passengers can use, including in lifeboats.²²⁷ The passenger must be allowed to bring food for the animal onto

²²⁰ See TEX. HUM. RES. CODE § 121.004

²²¹ *Id.*

²²² *Id.*

²²³ See 49 C.F.R. § 39.21

²²⁴ *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.)”

²²⁵ See TEX. HUM. RES. CODE § 121.002(4)

²²⁶ See 49 C.F.R. § 39.91(a)

²²⁷ *Id.* at § 39.91(b)

the ship at no additional charge and the ship must provide refrigeration space for the animal's food.²²⁸

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."²²⁹

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...."²³⁰

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."²³¹

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."²³²

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.²³³ An emotional support animal would also not qualify under the Texas statute since it also requires the animal to be specially trained.²³⁴

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

²²⁸ *Id* at § 39.91(c)

²²⁹ *See* TEX. HUM. RES. CODE § 121.002(5)

²³⁰ *See* P.10-13 at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf

²³¹ *See* TEX. HUM. RES. CODE § 121.002(1)

²³² *See* P.2 at https://cms.dot.gov/sites/dot.gov/files/docs/PVGuidance2_3_11.pdf

²³³ *Id* at P.1

²³⁴ *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.”²³⁵

The Texas statute allows a staff member of a public facility (including 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.²³⁶

h) Penalties and remedies for violations

Complaints against passenger vessel owners/operators for violations of the rules are investigated by the Department of Transportation.²³⁷ The DOT may refer any matters concerning noncompliance to the Department of Justice which may file suit against the POV.²³⁸

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.²³⁹ Additionally, a disabled person may sue the violator for monetary damages.²⁴⁰ There is a “conclusive presumption of damages in the amount of at least \$300 to the person with a disability.”²⁴¹

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.²⁴² Instead it requires employers to make “reasonable accommodations” for a disabled person.²⁴³ The Equal Opportunity Employment Commission (EEOC) was given authority to promulgate rules implementing Title I.²⁴⁴

²³⁵ See 49 C.F.R. § 39.91(d)

²³⁶ See TEX. HUM. RES. CODE § 121.003(I)

²³⁷ See 49 C.F.R. § 39.109

²³⁸ *Id.*

²³⁹ See TEX. HUM. RES. CODE § 121.004

²⁴⁰ *Id.*

²⁴¹ See TEX. HUM. RES. CODE § 121.004

²⁴² See generally 42 U.S.C § 12112

²⁴³ *Id.* at § 12112(b)(5)

²⁴⁴ 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.²⁴⁵

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.²⁴⁶ It does not apply to the U.S. government, Indian tribes, or private membership clubs.²⁴⁷ Title II of the ADA applies to state and local government employers.²⁴⁸ The Texas statute also only applies to employers with 15 or more employees.²⁴⁹

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.²⁵⁰ “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.”²⁵¹ “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.”²⁵² Major life activities also include “major bodily functions.”²⁵³ Texas has an identical statutory definition of disability.²⁵⁴

5. The disabled person must be qualified for the job

Under the ADA a disabled person must be qualified for the job.²⁵⁵ The person must have the requisite skills, experience, education, and must be able to perform the job’s essential functions if given reasonable accommodations.²⁵⁶ Texas similarly requires a disabled person to be qualified in order to receive reasonable accommodations.²⁵⁷

²⁴⁵ See TEX. LABOR CODE § 21.128(a)

²⁴⁶ See 42 U.S.C § 12111(5)(A)

²⁴⁷ *Id.* § 12111(5)(B)

²⁴⁸ See 42 U.S.C § 12131

²⁴⁹ See TEX. LABOR CODE § 21.002(8)(A)

²⁵⁰ See 42 U.S.C § 12102

²⁵¹ *Id.* at § 121102(1)

²⁵² *Id.* at § 121102(2)

²⁵³ *Id.*

²⁵⁴ See TEX. LABOR CODE § 21.002(6)

²⁵⁵ 29 C.F.R. § 1630.4;

²⁵⁶ *Id.* at §1630.2(m) Appendix

²⁵⁷ 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.”²⁵⁸ 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”²⁵⁹ or a “direct threat” to the health, safety, and welfare of the individual or others.²⁶⁰ 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.²⁶¹

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.”²⁶²

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.”²⁶³ The EEOC has said that allowing a disabled employee to take paid leave for training a service animal may be a reasonable accommodation.²⁶⁴

²⁵⁸ 29 C.F.R. § 1630.2(o)

²⁵⁹ *Id* at § 1630.9

²⁶⁰ *Id* at §1630.15(b)(2); §1630.2(r)

²⁶¹ *Id* at § 1630.2(p)

²⁶² *See* TEX. LABOR CODE § 21.128(b)

²⁶³ 29 C.F.R. § 1630.2(o)(1) Appendix

²⁶⁴ *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. Texas 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.²⁶⁵

10. Employees at food establishments

The Food and Drug Administration Code prohibits food employees from handling animals except for service animals.²⁶⁶ 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.”²⁶⁷

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.²⁶⁸ 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.²⁶⁹

²⁶⁵ See TEX. GOV. CODE § 661.910

²⁶⁶ See FDA Code § 2-403.11(a)

²⁶⁷ See *Id* at § 2-403.11(b) and § 6-501.115

²⁶⁸ See 29 C.F.R. § 1630.16(a) Appendix

²⁶⁹ *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.²⁷⁰ 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.²⁷¹

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.²⁷² Complaints against employers are filed with the EEOC or designated human rights agencies.²⁷³ If no violation of the ADA is found the complainant will be given a Notice of Right to Sue.²⁷⁴ If a violation is found the EEOC will attempt to reach a voluntary settlement with the employer.²⁷⁵ If a settlement cannot be reached and the EEOC does not file suit the complainant will be given a Notice of Right to Sue.²⁷⁶ Available remedies include hiring, reinstatement, promotion, back pay, reasonable accommodation, attorney's and expert witness fees.²⁷⁷ 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.²⁷⁸ There are statutory caps on recoverable damages.²⁷⁹

The Texas statute provides an administrative procedure for enforcement of the Texas Labor Code.²⁸⁰ The Texas Workforce Commission may also file a civil suit against an employer and the complainant may intervene in such a lawsuit.²⁸¹ The complainant may also request from

²⁷⁰ See 29 C.F.R. § 1630.14(a) and (c) Appendix

²⁷¹ See *Id* at § 1630.14(c) Appendix

²⁷² See <https://www.eeoc.gov/eeoc/publications/adaqa1.cfm>

²⁷³ *Id.*

²⁷⁴ See <https://www.eeoc.gov/employees/charge.cfm>

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ See <https://www.eeoc.gov/eeoc/publications/adaqa1.cfm>

²⁷⁸ *Id.*

²⁷⁹ See <https://www.eeoc.gov/employees/remedies.cfm> The caps range from \$50,000 to \$300,000, depending on the size of the employer

²⁸⁰ See TEX. LABOR CODE § 21.201 *et seq*

²⁸¹ *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.²⁸² 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.²⁸³ If the conduct was intentional the court may award compensatory and punitive damages.²⁸⁴ 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.²⁸⁵

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.²⁸⁶

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.²⁸⁷ 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.²⁸⁸

²⁸² *Id* at § 21.252

²⁸³ *Id* at § 21.258

²⁸⁴ *Id* at § 21.2585

²⁸⁵ *Id.*

²⁸⁶ *See* 42 U.S.C §12181(7)(j); 42 U.S.C 12182; and “PUBLIC ACCOMMODATIONS” *supra*.

²⁸⁷ *See* 20 U.S.C § 1400 *et seq*; 29 U.S.C. § 794 *et seq*.; *Sullivan v. Vallejo City Unified School District* 731

Supp. 947 (E.D. Cal. 1990); *Cave v. East Meadow Union Free School District*, 514 F.3d 240 (2d Cir. 2008).

²⁸⁸ *See* TEX. HUM. RES. CODE § 121.002(5), § 121.003(c)

F. HOUSING

1. U.S. Fair Housing Act²⁸⁹

The federal Fair Housing Act (FHA) makes it unlawful for a housing provider²⁹⁰ to refuse to make a reasonable accommodation that a person with a disability may need in order to have equal opportunity to enjoy and use a dwelling.²⁹¹ The Secretary of Housing and Urban Development (HUD) is responsible for administering the Fair Housing Act.²⁹² According to HUD, reasonable accommodations include allowing a disabled person to use an “assistance animal” in housing.²⁹³

2. Texas Fair Housing Act²⁹⁴

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.”²⁹⁵ The Texas anti-discrimination statute 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.”²⁹⁶

The Texas Fair Housing Act provides that, “[a] person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability.”²⁹⁷ 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.”²⁹⁸

Although the Texas Fair Housing Act does not specifically mention animals, the Texas

²⁸⁹ 42 U.S.C. § 3601 *et seq*

²⁹⁰ The term “housing provider” refers to any person or entity engaging in conduct covered by the FHA. Courts have applied the FHA to individuals, corporations, partnerships, associations, property owners, housing managers, homeowners and condominium associations, cooperatives, lenders, insurers, real estate agents, brokerage services, state and local governments, land use and zoning laws, colleges and universities, as well as others involved in the provision of housing, residential lending, and other real estate-related services. *Id* at § 3608

²⁹¹ 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.

²⁹² 42 U.S.C. § 3608

²⁹³ See Page 1 at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

²⁹⁴ TEX. PROP. CODE, Chapter 301

²⁹⁵ *Id* at § 301.002(3)

²⁹⁶ See TEX. HUM. RES. CODE § 121.003(h)

²⁹⁷ TEX. PROP. CODE § 301.025(a)

²⁹⁸ *Id* at § 301.025(c)(2)

Human Resources Code provides that a disabled person with a service animal “is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation or make a deposit for the animal...”²⁹⁹

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.³⁰⁰

4. “Assistance animals” must be allowed

Under the Federal Fair Housing Act, “housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide emotional support to alleviate a symptom or effect of a disability.”³⁰¹

5. “Assistance animals” include both “service” animals and “support” animals

Under the federal Fair Housing Act there are two types of “assistance animals” that qualify: (a) service animals, and (b) support animals.³⁰²

a) Service animals are defined the same under the FHA as the ADA: “a *dog* that is individually trained to do work or perform tasks for a person with a physical, sensory, psychiatric, intellectual, or other mental disability... The work or tasks performed by a service animal must be directly related to the individual’s disability” (emphasis added.)³⁰³

b) Support animals are “trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.” Emotional support animals do things like enable a person to deal with the symptoms or effects of major depression by giving them a reason to live, help a person with a mental illness to leave the isolation of home or to interact with others, and alleviate at least one symptom or effect of a mental impairment.³⁰⁴ Types of animals that qualify as support animals include:

1. “Animals commonly kept in households” qualify as support animals if they are animals “traditionally kept in the home for pleasure” such as a dog, cat, small bird, rabbit, hamster, gerbil or other rodent, fish, turtle, or other small domesticated animal.³⁰⁵ Reptiles (other than turtles), barnyard animals,

²⁹⁹ See TEX. HUM. RES. CODE § 121.003(h)

³⁰⁰ See 24 C.F.R. § 100.201; TEX. PROP. CODE § 301.003(6)

³⁰¹ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.³⁰⁶

2. “Unique animals” that are not animals commonly kept in households may qualify as support animals but a disabled person who requests to keep a unique type of animal that is not commonly kept in households “has the substantial burden of demonstrating a disability-related therapeutic need for the specific type of animal.”³⁰⁷ That person is “encouraged to submit documentation for a health care professional...including information set out in the Guidance on Documenting an Individual’s Need for Assistance Animals in Housing.”³⁰⁸

c) **The Texas Fair Housing Act** does not mention animals or state what types of animals would be a “reasonable accommodation,” but the Texas Human Resources Code provides that a disabled person with a service animal “is entitled to full and equal access to all housing...”³⁰⁹ A service animal is defined in the Texas Human Resource Code as a “canine that is specially trained or equipped” to help a disabled person.³¹⁰ Presumably, a “reasonable accommodation” under the Texas Fair Housing Act would also include allowing emotional support animals since allowing such animals is considered a “reasonable accommodation” under the federal Fair Housing Act³¹¹ and one of the stated purposes of the Texas Fair Housing Act is to “provide rights and remedies substantially equivalent to those granted under federal law.”³¹²

6. Housing provider may not limit breed or size

A housing provider may not limit the breed or size of a service or support animal just because of the size or breed.³¹³

7. Animal must not be a threat to health or safety

The Federal Fair Housing Act does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals, would result in

³⁰⁶ *Id.*

³⁰⁷ *Id.*; An example of a unique animal that has been trained to assist with a physical disability would be a monkey that has been trained to perform tasks for a person with paralysis caused by a spinal cord injury, such as retrieving a bottle from the refrigerator, unscrewing the cap and inserting a straw. The disabled person has a disability-related need for this specific type of unique animal because a dog cannot perform these tasks.

³⁰⁸ *Id.*

³⁰⁹ See TEX. HUM. RES. CODE § 121.003(h)

³¹⁰ See TEX. HUM. RES. CODE § 121.002(1)

³¹¹ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

³¹² See TEX. PROP. CODE § 301.002(3)

³¹³ See e.g., *Bhogaita v. Altamonte Heights Condo. Ass’n*, 765 F.3d 1277 (11th Cir. 2014) (housing provider’s rule that all dogs must be under 25 pounds).

substantial physical damages to the property of others, or would impose an undue financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations.³¹⁴

8. Pet deposits are prohibited

Assistance animals are not pets, and a housing provider may not charge a deposit, fee, or surcharge for an assistance animal, although a provider may charge a tenant for damage caused by an assistance animal if it is the provider's usual practice to charge for damage caused by tenants.³¹⁵

9. The request for accommodation

Although it is not necessary to submit a written request or to use the words “reasonable accommodation,” “assistance animal,” or any other special words to request a reasonable accommodation under the FHA, this is encouraged in order to avoid miscommunication.³¹⁶ A resident may request a reasonable accommodation at any time—either before or after acquiring the assistance animal or after a housing provider attempts to terminate the lease or tenancy because of the animal's presence.³¹⁷

10. Information may be requested when the disability is “not apparent”

Some impairments, such as blindness, mobility-limitation, deafness and certain neurological impairments (e.g., stroke, cerebral palsy, epilepsy, brain injury) are readily apparent or observable. When an impairment is not readily apparent, such as one that forms the basis for a request for an emotional support animal, the housing provider may request information regarding both the disability and the disability-related need for the animal.³¹⁸ Acceptable information may include a disability determination from a government agency, receipt of disability benefits or benefits or services, eligibility of housing assistance or voucher because of a disability, or information from a health care provider (e.g. physician, psychologist, optometrist, physician's assistant, nurse, or psychiatrist.)³¹⁹ However, a housing provider “may not insist on specific types of evidence if the information which is provided or actually known to the housing provider meets the requirements of this guidance. Disclosure of details about the diagnosis or

³¹⁴ See 24 C.F.R. § 100.202(d); <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (“Joint Statement”), Q and A 5 and 7 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>

³¹⁵ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>; TEX. HUM. RES. CODE § 121.003(h);

³¹⁶ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>; Joint Statement, Q and A 11 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>

³¹⁷ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>; Joint Statement, Q and A 12 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>

³¹⁸ See <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

³¹⁹ *Id.*

severity of a disability or medical records or a medical examination cannot be required.”³²⁰

11. 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. Nor does it prohibit a private club not open to the public from giving preference to its members.³²¹

The Texas Fair Housing Act has the same provision for religious entities.³²²

12. Penalties and remedies for violations

a) Federal Fair Housing Act

An individual can file a complaint with HUD up to one year after the discrimination.³²³ HUD’s Office of Fair Housing and Equal Opportunity (FHEO) handles complaints.³²⁴ HUD then investigates the complaint and may try to mediate the case through a conciliation process.³²⁵ HUD may refer the case to a state or local public agency.³²⁶ 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.³²⁶ The complainant has the right to have the case heard in federal court or before an administrative law judge.³²⁷ An ALJ can award the complainant actual damages, injunctive relief, and impose civil penalties.³²⁸ A complainant has the choice of not waiting until HUD completes its investigation and filing a private civil lawsuit.³²⁹ The court may appoint an attorney to represent the complainant.³³⁰ A prevailing plaintiff may be awarded actual and punitive damages, attorney’s fees, and injunctive relief.³³¹ The Attorney General may file suit on behalf of the United States if there is reasonable cause to believe there is a pattern or practice of discrimination.³³²

³²⁰ *Id.*

³²¹ *See* 42 U.S.C. § 3607

³²² *See* TEX. PROP. CODE § 301.042

³²³ *See* 42 U.S.C. § 3610(a)

³²⁴ *See* https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process

³²⁵ *See* 42 U.S.C. § 3610

³²⁶ *Id.*

³²⁷ *See* 42 U.S.C. § 3612

³²⁸ *Id.*

³²⁹ *See* 42 U.S.C. § 3613

³³⁰ *Id.*

³³¹ *Id.*

³³² *See* 42 U.S.C. § 3614

b) Texas Fair Housing Act

A person who believes 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.³³³ The Commission investigates the complaint and must reach a decision within 100 days.³³⁴ The Commission shall attempt to “conciliate” the complaint.³³⁵ The Commission may authorize a civil action by the Texas Attorney General.³³⁶ If the Commission finds reasonable cause that a violation has occurred it may issue a “charge.”³³⁷ After a hearing the Commission may order relief, including actual damages, attorney’s fees, injunctive relief and civil penalties.³³⁸ The Commission may authorize the attorney general to file suit.³³⁹ An individual may also file suit in district court no later than two years after the occurrence and, on request, may receive a court-appointed attorney.³⁴⁰ 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.³⁴¹ In any suit brought under the Texas Fair Housing Act the court may award reasonable attorney’s fees to the prevailing party.³⁴²

G. 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.³⁴³

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.³⁴⁴

³³³ See TEX. PROP. CODE § 301.081

³³⁴ *Id* at § 301.083(b).

³³⁵ *Id* at § 301.085(a)

³³⁶ *Id* at § 301.086(a)

³³⁷ *Id* at § 301.089

³³⁸ *Id* at § 301.112

³³⁹ *Id*

³⁴⁰ *Id* at § 301.151-152

³⁴¹ *Id* at § 301.153

³⁴² *Id* at § 301.156 (This provision is a proverbial double-edged sword as the court may order a losing complainant to pay the housing provider’s attorney’s fees.)

³⁴³ See 42 U.S.C § 5196(e)(4)

³⁴⁴ 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 disabled person. Training can be by owner.	Animal that provides comfort or support for a disabled person 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 needed because of a disability 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	Dogs only. Housing provider may ask for reasonable documentation if disability is not apparent. Animal does not need to be registered or certified.	Allowed. Common household animals qualify. “Unique” animals—substantial burden on disabled person to show need. Housing provider may ask for reasonable documentation if disability is not apparent.
Airplanes	Only specially trained dogs. Also must not pose risk to health, safety, welfare of others or disrupt flight. Doesn’t matter if other passengers are scared or annoyed. Airline may require DOT service animal forms. Must fit on lap or floor space.	Not allowed
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