

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

Attachment F

INTRODUCED

LLS NO. 16-0756.01 Jane Ritter x4342

HOUSE BILL 16-1308

HOUSE SPONSORSHIP

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

SENATE SPONSORSHIP

Newell, Todd

House Committees  
Judiciary

Senate Committees

101 A BILL FOR AN ACT  
102 INTENTIONAL  
CONCERNING THE OFFENSE OF ~~FRAUDULENT~~ MISREPRESENTATION OF  
A SERVICE ANIMAL.

Bill Summary

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

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

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

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

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

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

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

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

6 (b) The term "service animal" has a distinct meaning in the law.

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

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

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

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

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

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

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

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

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

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

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

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

13 **SECTION 2.** In Colorado Revised Statutes, ~~add 18-13-131~~<sup>add 18-13-131</sup> as  
14 follows: 107.5

15 **18-13-131. ~~Fraudulent~~<sup>107.5 Intentional</sup> misrepresentation of a service animal**  
16 **for a person with a disability - penalty - sealing of conviction records**  
17 **- definitions.** (1) A PERSON COMMITS ~~FRAUDULENT MISREPRESENTATION~~<sup>INTENTIONAL</sup>

18 OF A SERVICE ANIMAL IF:

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

25 (II) THE PERSON KNOWS THAT THE ANIMAL IN QUESTION IS NOT A  
26 ~~SERVICE ANIMAL~~<sup>OR SERVICE-ANIMAL-IN-TRAINING</sup>

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

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

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

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

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

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

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

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

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

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

5 (I) THE PETITION IS FILED;

6 (II) THE FILING FEE IS PAID;

INTENTIONAL

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

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

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

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

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

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

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

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

9 **SECTION 3. Safety clause.** The <sup>2</sup> ~~2~~ OF A SERVICE ANIMAL WHILE THE ANIMAL  
10 determines, and declares that this act is ~~IS BEING TRAINED AS A SERVICE ANIMAL.~~  
11 preservation of the public peace, health, and safety.