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SENATE BILL 320

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO DISABILITY; RENAMING THE ASSISTANCE ANIMAL ACT AS THE "SERVICE ANIMAL ACT"; AMENDING THE SERVICE ANIMAL ACT TO PROVIDE FOR QUALIFIED SERVICE DOGS AND QUALIFIED SERVICE MINIATURE HORSES; ENACTING A NEW SECTION OF THE SERVICE ANIMAL ACT TO PROHIBIT A PERSON FROM KNOWINGLY PRESENTING AS A QUALIFIED SERVICE ANIMAL ANY ANIMAL OTHER THAN A QUALIFIED SERVICE ANIMAL; PRESCRIBING CIVIL AND CRIMINAL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 28-11-1.1 NMSA 1978 (being Laws 2005, Chapter 224, Section 1) is amended to read:

"28-11-1.1. SHORT TITLE.--Chapter 28, Article 11 NMSA 1978 may be cited as the "[~~Assistance~~] Service Animal Act"."

**SECTION 2.** Section 28-11-2 NMSA 1978 (being Laws 1989, Chapter 242, Section 1, as amended) is amended to read:

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1 "28-11-2. DEFINITIONS.--As used in the [Assistance]

2 Service Animal Act:

3 A. "emotional support animal", "comfort animal" or  
4 "therapy animal" means an animal selected to accompany an  
5 individual with a disability that does not work or perform  
6 tasks for the benefit of an individual with a disability and  
7 does not accompany at all times an individual with a  
8 disability;

9 B. "qualified [assistance] service animal" means  
10 any [assistance] qualified service dog or [other animal]  
11 qualified service miniature horse that has been or is being  
12 trained to provide assistance to an individual with a  
13 disability [and includes:

14 ~~A. an assistance dog that has been or is being~~  
15 ~~trained, as a guide dog, hearing dog or service dog;~~

16 ~~B. a guide dog that has been or is being trained to~~  
17 ~~aid a blind or visually impaired person;~~

18 ~~C. a hearing dog that has been or is being trained~~  
19 ~~to aid a deaf or hearing-impaired person; and~~

20 ~~D. a service dog that has been or is being trained~~  
21 ~~to aid a person with a disability other than a sight or hearing~~  
22 ~~impairment]; but "qualified service animal" does not include a~~  
23 ~~pet, an emotional support animal, a comfort animal or a therapy~~  
24 ~~animal;~~

25 C. "qualified service dog" means a dog that has

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1 been trained or is being trained to work or perform tasks for  
2 the benefit of an individual with a disability who has a  
3 physical or mental impairment that substantially limits one or  
4 more major life activities; and

5 D. "qualified service miniature horse" means a  
6 miniature horse that has been trained or is being trained to  
7 work or perform tasks for the benefit of an individual with a  
8 disability who has a physical or mental impairment that  
9 substantially limits one or more major life activities."

10 SECTION 3. Section 28-11-3 NMSA 1978 (being Laws 1989,  
11 Chapter 242, Section 2, as amended) is amended to read:

12 "28-11-3. ADMITTANCE OF QUALIFIED ~~[ASSISTANCE ANIMALS]~~  
13 SERVICE ANIMAL.--

14 A. Notwithstanding any other provision of law:  
15 ~~[A.]~~ (1) a person with a disability who is  
16 using a qualified ~~[assistance]~~ service animal shall be admitted  
17 to any building open to the public and to all other public  
18 accommodations ~~[such as restaurants, hotels, hospitals,~~  
19 ~~swimming pools, stores]~~ and shall be allowed access to all  
20 common carriers ~~[and theaters]~~; provided that the qualified  
21 ~~[assistance]~~ service animal is under the control of an owner,  
22 ~~[or]~~ a trainer or a handler of the qualified ~~[assistance]~~  
23 service animal. ~~[No]~~ A person shall not deny an individual  
24 with a qualified service animal entry to a building open to the  
25 public or to any public accommodation or deny access to a

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1 common carrier, regardless of any policy of denying to pets  
2 entry to that building, public accommodation or common carrier.

3 A person shall not be required to pay any additional charges  
4 for the qualified [~~assistance~~] service animal, but [~~shall~~] may  
5 be liable for any damage done by the qualified [~~assistance~~]  
6 service animal; provided that persons without disabilities  
7 would be liable for similar damage; and

8 [~~B.~~] (2) in an emergency requiring  
9 transportation or relocation of the owner or trainer of the  
10 qualified [~~assistance~~] service animal, to the extent  
11 practicable, accommodations shall be made for the qualified  
12 [~~assistance~~] service animal to remain or be reunited with the  
13 owner, [~~or~~] trainer or handler. When accommodations cannot be  
14 made for allowing the qualified service animal to remain with  
15 the owner, trainer or handler, the qualified service animal  
16 shall be placed pursuant to instructions provided by the owner,  
17 trainer or handler.

18 B. This section does not require a public  
19 accommodation or common carrier to permit an owner, trainer or  
20 handler using a qualified service animal to have access to a  
21 public accommodation or common carrier in circumstances in  
22 which the individual's use of the qualified service animal  
23 poses a direct threat of significant harm to the health or  
24 safety of others."

25 SECTION 4. Section 28-11-4 NMSA 1978 (being Laws 1989,

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1 Chapter 242, Section 3, as amended) is amended to read:

2 "28-11-4. PENALTY.--

3 A. A person who violates a provision of the  
4 [~~Assistance~~] Service Animal Act [~~shall be~~] is guilty of a  
5 misdemeanor and, upon conviction, shall be sentenced in  
6 accordance with the provisions of Section 31-19-1 NMSA 1978.

7 B. Nothing in this section shall be construed to  
8 preclude any other remedy otherwise available pursuant to  
9 common law or other law of this state."

10 SECTION 5. Section 28-11-5 NMSA 1978 (being Laws 1999,  
11 Chapter 113, Section 1, as amended) is amended to read:

12 "28-11-5. FINDINGS AND PURPOSE--INTERFERENCE WITH  
13 QUALIFIED [~~ASSISTANCE~~] SERVICE ANIMALS PROHIBITED--CRIMINAL AND  
14 CIVIL PENALTIES.--

15 A. The legislature finds that unrestrained [~~dogs~~]  
16 animals constitute a danger to qualified [~~assistance~~] service  
17 animals and public safety. The purpose of this section is to  
18 protect persons with disabilities and qualified [~~assistance~~]  
19 service animals from attack by unrestrained [~~dogs~~] animals.

20 B. It is unlawful for any person, with no [~~legal~~  
21 justification] legitimate reason, to:

22 (1) intentionally interfere with the use of a  
23 qualified [~~assistance~~] service animal by harassing or  
24 obstructing the owner, [~~or~~] trainer or handler of the qualified  
25 [~~assistance~~] service animal or the qualified [~~assistance~~]

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1 service animal; or

2 (2) intentionally fail or refuse to control  
3 the person's unrestrained [~~dog, and that dog~~] animal, which  
4 animal interferes with or obstructs the owner, [~~or~~] trainer or  
5 handler of the qualified [~~assistance~~] service animal [~~or the~~  
6 ~~qualified assistance animal~~].

7 C. The provisions of this section shall not apply  
8 to unrestrained [~~dogs~~] animals on private property not open to  
9 the public.

10 D. A person who violates the provisions of this  
11 section is guilty of a misdemeanor and upon conviction shall be  
12 punished pursuant to Section 31-19-1 NMSA 1978. A person  
13 convicted under this section may be ordered to pay restitution,  
14 including, [~~the cost of veterinary bills and replacement and~~  
15 ~~training costs of a qualified assistance animal, if such costs~~  
16 ~~are incurred as a result of the violation~~] but not limited to,  
17 actual damages.

18 E. Nothing in this section shall be construed to  
19 preclude any other remedies otherwise available pursuant to  
20 common law or the NMSA 1978."

21 **SECTION 6.** A new section of the Service Animal Act is  
22 enacted to read:

23 "[NEW MATERIAL] PROHIBITION OF FALSE PRESENTATION OF  
24 ANIMAL AS A QUALIFIED SERVICE ANIMAL.--A person shall not  
25 knowingly present as a qualified service animal any animal that

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1 does not meet a definition of "qualified service animal"  
2 pursuant to Section 28-11-2 NMSA 1978. A person who violates  
3 the provisions of this section is guilty of a misdemeanor and  
4 upon conviction shall be punished pursuant to Section 31-19-1  
5 NMSA 1978."

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