

1 S.261

2 Introduced by Senator McCormack

3 Referred to Committee on

4 Date:

5 Subject: Crimes; humane and proper treatment of animals; service animals

6 Statement of purpose: This bill proposes to: (1) prohibit a person from
7 interfering with any service animal in the course of the performance of its
8 duties or training as a service animal; (2) establish penalties for cruelty to a
9 service animal or for the killing of a service animal; and (3) permit an owner or
10 user of a service animal that has been harmed in violation of this act to obtain
11 restitution from or file a civil action against the person who violated this act.

12 An act relating to interference with or cruelty to a service animal

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 13 V.S.A. § 355 is added to read:

15 § 355. INTERFERENCE WITH OR CRUELTY TO A SERVICE ANIMAL

16 (a) As used in this section, “service animal” includes:

17 (1) An animal that a person who has an impairment or disability that
18 substantially limits the performance of major life activities relies upon for
19 assistance in performing major life activities or as an alert signal regarding the

1 onset of a person's medical condition and that has been trained to provide these
2 services to a human being.

3 (2) An animal used by law enforcement, fire departments, or other
4 federal, state, or local officials in an official capacity for law enforcement
5 purposes, investigation of fires, search and rescue, seeking missing persons, or
6 security services.

7 (3) An animal used by an essential public service, a nuclear power plant,
8 or public or private utility for the purpose of securing the site against sabotage
9 or terrorism.

10 (4) An animal being trained for the purposes set forth in subdivisions
11 (1), (2), and (3) of this subsection.

12 (b) No person shall interfere with or permit an animal that he or she owns
13 or is in immediate control of to interfere with the use or training of a service
14 animal by obstructing, intimidating, teasing, or otherwise jeopardizing the
15 safety of the service animal or its user if the person knows or reasonably
16 should know that the animal is a service animal. A person who violates this
17 subsection shall be:

18 (1) for a first offense, imprisoned not more than one year or fined not
19 more than \$1,000.00, or both.

20 (2) for a second or subsequent offense, imprisoned not more than two
21 years or fined not more than \$2,000.00, or both.

1 (c) No person shall intentionally torment, torture, beat, strike, or administer
2 a desensitizing drug, chemical, or substance to a service animal. The duty
3 status of a service animal at the time of the offense is not a factor in the
4 application of this subsection. A person who violates this subsection shall be:

5 (1) for a first offense, imprisoned not more than two years or fined not
6 more than \$2,000.00, or both.

7 (2) for a second or subsequent offense, imprisoned not more than three
8 years or fined not more than \$3,000.00, or both.

9 (d) No person shall recklessly kill or permit an animal that he or she owns
10 or is in immediate control of to kill a service animal. The duty status of a
11 service animal at the time of the offense is not a factor in application of this
12 subsection. A person who violates this subsection shall be:

13 (1) for a first offense, imprisoned not more than two years or fined not
14 more than \$3,000.00, or both.

15 (2) for a second or subsequent offense, imprisoned not more than five
16 years or fined not more than \$5,000.00, or both.

17 (e) No person shall intentionally kill or permit an animal that he or she
18 owns or is in immediate control of to kill a service animal. The duty status of a
19 service animal at the time of the offense is not a factor in application of this
20 subsection. A person who violates this subsection shall be:

1 (1) for a first offense, imprisoned not more than five years or fined not
2 more than \$10,000.00, or both.

3 (2) for a second or subsequent offense, imprisoned not more than ten
4 years or fined not more than \$20,000.00, or both.

5 (f) The penalty for a violation of this section which was committed during
6 the commission of a felony shall be the same as the penalty for the felony but
7 shall not exceed more than 10 years in prison.

8 (g) It shall be an affirmative defense to any criminal prosecution under this
9 section that the service animal was being used during the commission of a
10 felony, or to any criminal prosecution for a service animal as defined in
11 subdivision (a)(1) of this section that the service animal posed a significant and
12 imminent danger to another human being or domestic animal when the actions
13 being prosecuted are alleged to have occurred, and that the actions taken by the
14 accused were to protect against the danger posed by the service animal. Proof
15 of the affirmative defense shall be by clear and convincing evidence.

16 (h) As provided in section 7043 of this title, restitution shall be considered
17 by the court in any sentencing under this section if the victim has suffered any
18 material loss. Measure of material loss shall include veterinary medical
19 expenses, costs of temporary replacement assistance services whether provided
20 by a person or an animal, replacement value of an equally trained service
21 animal without any differentiation for the age or experience of the animal, loss

1 of income and wages, and any other costs and expenses incurred by the person
2 as a result of the injury to the service animal.

3 (i) A person who uses a service animal or who is the owner of a service
4 animal may bring, in addition to any penalties provided herein, an action for
5 compensatory and punitive damages against any person who violates this
6 section with regard to the person's service animal. It shall be an affirmative
7 defense to any civil action under this subsection that the service animal was
8 being used during the commission of a felony, or to any civil action for a
9 service animal as defined in subdivision (a)(1) of this section that the service
10 animal posed a significant and imminent danger to a human being or another
11 domestic animal when the actions being charged are alleged to have occurred
12 and that the actions taken by the accused were to protect against the danger
13 posed by the service animal. Proof of the affirmative defense shall be by a
14 preponderance of the evidence. The court shall award reasonable attorney's
15 fees and expert witness' fees to the prevailing plaintiff in an action under this
16 subsection. The court may award reasonable attorney's fees and expert
17 witness' fees uncured by a defendant who prevails in the action if the court
18 determines that the plaintiff had no objectively reasonable basis for asserting a
19 claim or no objectively reasonable basis for appealing an adverse decision of a
20 trial court.