**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 47‑3‑980 SO AS TO PROVIDE THAT INTENTIONAL MISREPRESENTATION OF A SERVICE ANIMAL IS A MISDEMEANOR AND TO ESTABLISH PENALTIES; AND TO AMEND SECTIONS 47‑3‑920 AND 47‑3‑970, RELATING TO TERMS DEFINED IN LAYLA’S LAW AND RESTITUTION REQUIREMENTS RESPECTIVELY, SO AS TO MAKE CONFORMING CHANGES.

Whereas, service animals that are properly trained to assist persons with disabilities play a vital role in establishing independence for such persons; and

Whereas, the term “service animal” has a distinct meaning in the law. A service animal means an animal that is trained for the purposes of assisting or accommodating the sensory, mental, or physical disability of a disabled person. Under the law, the provision of emotional support, well‑being, comfort, or companionship does not constitute the work or tasks of a service animal; and

Whereas, no vest, other marking, or documentation is required for an animal to qualify as a service animal, nor are such vests, markings, or documentation a reliable indication of whether an animal is, by law, a service animal. People sometimes erroneously think that a therapy animal, an emotional support animal, or any animal wearing a vest or having any other type of marking is a service animal as defined by law; and

Whereas, there are an increasing number of occurrences where people exploit the confusion related to service animals and attempt to bring an animal into a place that it would otherwise not be allowed to enter by passing off a pet, therapy animal, or emotional support animal as a service animal, either by oral misrepresentation, placing a vest or other marking on the animal, or presenting a “certificate”, despite knowing that it is not a service animal; and

Whereas, some companies mislead individuals into believing that they will be entitled to the rights or privileges for individuals with disabilities with service animals if only they buy the company’s vests or obtain some type of certificate. These misrepresentations, in some cases, are unlawful deceptive trade practices and compound the confusion around service animals; and

Whereas, commendably, federal and state laws require places of public accommodation, including restaurants, theaters, stores, hospitals, and more, to allow any animal that is presented as a service animal into the place of public accommodation. These same places of public accommodation face a dilemma when someone enters the premises and intentionally misrepresents his or her animal as a service animal; and

Whereas, when people try to falsely represent a non‑service animal as a service animal, business owners and other places of public accommodation become increasingly distrustful that an animal being represented to them as a service animal is, in fact, a service animal. Misrepresentation of service animals delegitimizes the program and makes it harder for persons with disabilities to gain unquestioned acceptance of their legitimate, properly trained, and essential service animals; and

Whereas, the General Assembly finds that the State of South Carolina needs to enact the crime of intentional misrepresentation of a service animal for a person with a disability. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 15, Chapter 3, Title 47 of the 1976 Code is amended by adding:

“Section 47‑3‑980. (A) A person commits intentional misrepresentation of a service animal if:

(1) the person intentionally misrepresents an animal in his possession as the person’s service animal or service‑animal‑in‑training for the purposes of obtaining any of the rights or privileges under Chapter 33, Title 43, or any other provision of law guaranteeing equal access by individuals with any disability to places open to the general public, including the Americans with Disabilities Act; and

(2) the person knows the animal is not a service animal or a service‑animal‑in‑training.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined:

(1) for a first offense, an amount not less than three hundred fifty dollars and not more than one thousand dollars;

(2) for a second offense, an amount not less than six hundred dollars and not more than one thousand dollars;

(3) for a third or subsequent offense, an amount not less than one thousand dollars and not more than five thousand dollars, in addition to not more than ten hours of community service.

(C)(1) A defendant may petition the court in which any conviction records pertaining to conviction for a first offense of intentional misrepresentation of a service animal are located for the sealing of the conviction records, except for basic identifying information.

(2) If a petition is filed pursuant to item (1) for the sealing of a record of conviction for intentional misrepresentation of a service animal, the court shall order the record sealed if the following criteria are met:

(a) the petition is filed;

(b) the filing fee is paid;

(c) the defendant’s first conviction for intentional misrepresentation of a service animal was at least three years prior to the date of the petition; and

(d) the defendant has not had a subsequent conviction of intentional misrepresentation of a service animal.”

SECTION 2. Section 47‑3‑920(5) of the 1976 Code is amended to read:

“(5) ‘Service‑animal‑in‑training’ means an animal accompanying a trainer of a service animal while the animal is being trained as a service animal.

(6) ‘Trainer of a service animal’ means a person who individually trains a service animal.

(7) ‘Value’ means the value to the guide dog or service animal user and does not refer to the cost or fair market value.”

SECTION 3. Section 47‑3‑970 of the 1976 Code is amended to read:

“Section 47‑3‑970. (A) A defendant convicted of a violation of ~~this article~~ Section 47‑3‑930, 47‑3‑940, 47‑3‑950, or 47‑3‑960 may be ordered to make full restitution for damages including incidental and consequential expenses incurred by the guide dog or service animal and its user, which arise out of or are related to the criminal offense.

(B) Restitution ~~for a conviction under this article~~ ordered pursuant to this section includes, but is not limited to:

(1) the value of the replacement of an incapacitated or deceased guide dog or service animal, the training of a replacement guide dog or service animal, or retraining of the affected guide dog or service animal and related veterinary and care expenses; and

(2) medical expenses of the guide dog or service animal user, training of the guide dog or service animal user, and compensation for wages or earned income lost by the guide dog or service animal user.

(C) This article does not affect civil remedies available for conduct punishable under this article. Restitution paid pursuant to this article must be set off against damages awarded in a civil action arising out of the same conduct that resulted in the restitution payment.”

SECTION 4. This act takes effect upon approval by the Governor.

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