

1 H.524

2 Introduced by Representatives Kilmartin of Newport City, Lippert of
3 Hinesburg, Andrews of Rutland City, Bohi of Hartford,
4 Crawford of Burke, Donovan of Burlington, French of
5 Randolph, Grad of Moretown, Head of South Burlington,
6 Jerman of Essex, Johnson of South Hero, Koch of Barre Town,
7 Komline of Dorset, Lawrence of Lyndon, Lorber of Burlington,
8 Maier of Middlebury, Marcotte of Coventry, McDonald of
9 Berlin, Mitchell of Barnard, Morrissey of Bennington, Nease of
10 Johnson, O'Donnell of Vernon, Pearce of Richford, Perley of
11 Enosburg, Pugh of South Burlington, Rodgers of Glover,
12 Sweaney of Windsor, Till of Jericho, Weston of Burlington,
13 Wright of Burlington and Zuckerman of Burlington

14 Referred to Committee on

15 Date:

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

17 Statement of purpose: This bill proposes to: (1) prohibit a person from
18 interfering with any service animal in the course of the performance of its
19 duties or training as a service animal; (2) establish penalties for cruelty to a
20 service animal or for the killing of a service animal; and (3) permit an owner or

1 user of a service animal that has been harmed in violation of this act to obtain
2 restitution from or file a civil action against the person who violated this act.

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

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

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

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

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

8 (1) An animal that a person who has an impairment or disability that
9 substantially limits the performance of major life activities relies upon for
10 assistance in performing major life activities or as an alert signal regarding the
11 onset of a person’s medical condition and that has been trained to provide these
12 services to a human being.

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

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

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

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

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

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

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

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

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

1 (d) No person shall recklessly kill or permit an animal that he or she owns
2 or is in immediate control of to kill a service animal. The duty status of a
3 service animal at the time of the offense is not a factor in application of this
4 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 \$3,000.00, or both.

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

9 (e) No person shall intentionally kill or permit an animal that he or she
10 owns 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 five years or fined not
14 more than \$10,000.00, or both.

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

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

20 (g) It shall be an affirmative defense to any criminal prosecution under this
21 section that the service animal was being used during the commission of a

1 felony, or to any criminal prosecution for a service animal as defined in
2 subdivision (a)(1) of this section that the service animal posed a significant and
3 imminent danger to another human being or domestic animal when the actions
4 being prosecuted are alleged to have occurred, and that the actions taken by the
5 accused were to protect against the danger posed by the service animal. Proof
6 of the affirmative defense shall be by clear and convincing evidence.

7 (h) As provided in section 7043 of this title, restitution shall be considered
8 by the court in any sentencing under this section if the victim has suffered any
9 material loss. Measure of material loss shall include veterinary medical
10 expenses, costs of temporary replacement assistance services whether provided
11 by a person or an animal, replacement value of an equally trained service
12 animal without any differentiation for the age or experience of the animal, loss
13 of income and wages, and any other costs and expenses incurred by the person
14 as a result of the injury to the service animal.

15 (i) A person who uses a service animal or who is the owner of a service
16 animal may bring, in addition to any penalties provided herein, an action for
17 compensatory and punitive damages against any person who violates this
18 section with regard to the person's service animal. It shall be an affirmative
19 defense to any civil action under this subsection that the service animal was
20 being used during the commission of a felony, or to any civil action for a
21 service animal as defined in subdivision (a)(1) of this section that the service

1 animal posed a significant and imminent danger to a human being or another
2 domestic animal when the actions being charged are alleged to have occurred
3 and that the actions taken by the accused were to protect against the danger
4 posed by the service animal. Proof of the affirmative defense shall be by a
5 preponderance of the evidence. The court shall award reasonable attorney's
6 fees and expert witness's fees to the prevailing plaintiff in an action under this
7 subsection. The court may award reasonable attorney's fees and expert
8 witness's fees uncured by a defendant who prevails in the action if the court
9 determines that the plaintiff had no objectively reasonable basis for asserting a
10 claim or no objectively reasonable basis for appealing an adverse decision of a
11 trial court.