



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 5, 2024

TO: **The Honorable David Lawson, Delaware State Senate**
The Honorable Daniel Short, Delaware State House of Representatives
The Honorable Senators Buckson, Hocker, Pettyjohn and Wilson
The Honorable Representative Parker Selby

FROM: **Ann Fisher, Chairperson**
GACEC

RE: **Senate Bill No. 219 Misrepresentation of Service Animals and Assistance Animals**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 219, which makes it an offense to misrepresent a service dog or assistance animal. The legislation levies a civil penalty of \$500 for a first offense and make it an unclassified misdemeanor for second or subsequent offenses. Council would like to share our concerns and opposition to the proposed legislation as it is currently structured.

The primary concern with this bill is that it may have the unintended consequence of creating a significant cost for Delawareans with disabilities who may be placed in the position of proving their assistance animal is legitimate or face a financial penalty and/or misdemeanor charge. There is no requirement that service animals and support animals go through professional training or otherwise be certified or registered. So, for an individual who has trained their assistance animal themselves, they may only have their word to defend themselves.

There is significant confusion in the U.S. over the requirements for assistance animals, due in part because there are several different laws that enable assistance animals to enter spaces where they may otherwise be excluded, and the requirements are different for each law. This legislation could have the impact of criminalizing well-intentioned people who do not understand the difference between those laws as described below.

The federal laws that most commonly apply to assistance animals include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, the Fair Housing Act (FHA), and the Air Carrier Act. Each of these laws have different terminology and different requirements, which causes confusion to the public and can contribute to a perception of fraud. Focusing on the ADA and FHA:

- *ADA allows service dogs (or sometimes miniature horses) who are individually trained to perform a task for an individual with a disability to access certain locations pets normally cannot go. The ADA applies to businesses that are open to the public, government services and employment.*

- *FHA allows for both service animals and support animals (not limited to dogs), including emotional support animals; emotional support animals are animals who are not trained to perform tasks but rather provide therapeutic benefit and support. FHA applies in the housing context.*

Even some individuals with disabilities do not understand the difference between the two and mistakenly believe that emotional support animals can go into businesses like restaurants, with no intent to mislead. Thus, an individual with a disability may intentionally fit an emotional support dog with a vest, not realizing that the emotional support dog is only allowed in housing, rather than in businesses.

Of note, the definition of disability itself is broad and disability is not always visible. Individuals with unobservable disabilities or disabilities that others do not judge to be significant may be wrongly accused under this bill. Indeed, discrimination against individuals with “invisible” disabilities is pervasive, from an individual with an invisible disability having someone scream at them or give them dirty looks for using a disability parking placard, to critical reviews of reasonable accommodation requests.

Another concern with this bill is that it could cause intrusion into the personal information of people with disabilities who must defend themselves from claims of misrepresentation. Under the ADA and FHA, individuals are only allowed to ask limited questions, to prevent discrimination against people with disabilities and intrusion into their privacy. For example, under the ADA they are only permitted to ask two questions:

- Is that a service animal that you need due to a disability?
- What task is it trained to perform?

Under FHA, the inquiry is limited primarily to:

- seeking information that reasonably supports that a person has a disability (if not observable),
- information that reasonably support that the animal does work/performs tasks, provides assistance, and/or provides therapeutic emotional support; and
- that the animal is commonly kept in households (except rare circumstances)

Fraudulent assistance animals are unethical and do cause problems for people with disabilities. However, the language used in this bill, “intentionally” “misrepresents”, is very subjective and could actually further discrimination and isolation of individuals with disabilities, who may be afraid of being accused of assistance animal fraud, and thus forgo the needed assistance, or avoid venturing out into the community altogether.

While a number of states have these laws, a better use of Delaware’s time and resources would be in increasing public education about service and assistance animals, what the requirements are, which kinds can go where, and when animals can be excluded (such as out of control dogs).

Council acknowledges that some individuals unethically exploit the protections in place for people with disabilities to have their service animals with them in certain settings and circumstances. We recommend opening dialogue to explore alternatives to the current language, which is highly punitive and could compromise the privacy of people with disabilities who have a legitimate right to being accompanied by a service animal. This legislation could also impede efforts of community integration and involvement.

Thank you for the opportunity to share our observations and concerns with you. We would really like to discuss this legislation and develop a pattern of discussion on any future legislation that may impact individuals with disabilities. Please feel free to contact me or Pam Weir at the GACEC office should you have any questions on our comments and any suggestions on how the GACEC may develop a more collaborative relationship with our legislators.