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FINAL REPORT OF THE SENATE STUDY COMMITTEE ON SERVICES ANIMALS FOR PHYSICALLY OR MENTALLY IMPAIRED PERSONS (SR 467)

Committee Members

Senator Renee Unterman, Chair
District 45

Senator Gloria Butler
District 55

Senator Greg Kirk
District 13

Senator Kay Kirkpatrick
District 32

Senator Nan Orrock
District 36

Prepared by the Senate Research Office, 2018

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STUDY COMMITTEE CREATION, FOCUS, AND DUTIES

The Senate Study Committee on Service Animals for Physically Disabled or Mentally Impaired Persons (the “Committee”) was created by Senate Resolution 467, sponsored by Senator Renee Unterman of the 45th during the 2018 legislative session.¹ The Committee was charged with undertaking a study of the issues relating to service animals, including whether there is a need for a uniform certification process or the issuance of information cards, whether there is a need to criminalize the use of a “fake service animal,” or whether the rights of trainers of service animals should be clarified.

The Committee was comprised of the following Senate members:

- Senator Gloria Butler of the 55th;
- Senator Greg Kirk of the 13th;
- Senator Kay Kirkpatrick of the 32nd;
- Senator Nan Orrock of the 36th; and
- Senator Renee Unterman of the 45th.

Senator Unterman, Chair of the standing Senate Committee on Health and Human Services, served as Chair of this Committee. The Committee met four times during the interim in Room 450 of the State Capitol in Atlanta, Georgia, receiving public testimony and comment from a wide array of industry experts, stakeholders, state agencies, and consumer advocates.

The following legislative staff members were assigned to this Committee: Ms. Ines Owes of the Senate Press Office; Mr. Jared Evans of the Senate Budget and Evaluation Office; Ms. Elizabeth Holcomb and Mr. James Beal of the Senate Research Office; Mr. Jeff Lanier of the Office of Legislative Counsel; and Ms. Avi’el Vargas, Committee Secretary for Senate Health and Humans Services and Legislative Assistant to Senator Unterman.

¹ See <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SR/467>.

MEETING TESTIMONY

Meeting 1 – September 26, 2018

The Committee held its first hearing at the State Capitol in Room 450. Background information and an overview of the issues to be studied were provided by the following individuals:

- Ms. Patty Veazey, Health Care Lawyer in Tifton, Georgia; Parker Hudson, Rainer & Dobbs, LLP.
- Ms. Claudine Wilkins, Founder of Animal Law Source and the Animal Law Section of the State Bar of Georgia.
- Ms. Christine Boucher, Managing Director of Global Environment, Sustainability and Compliance, Delta Air Lines, Inc.
- Ms. Katie Jones, Director of Advocacy and Finance, Georgia Restaurant Association.
- Mr. Daniel New, Project and Research Associate, Georgia Restaurant Association.
- Ms. Kathy Kuzava, President, Georgia Food Industry Association.

Ms. Veazey provided background information on the ADA and Georgia laws that authorize physically and mentally impaired persons to be accompanied by a service animal, explaining that the public accommodation for service animals extends to hospital settings. In doing so, she clarified that service animals are recognized under the ADA and are limited to dogs and miniature horses that have been trained to assist the individual with specific tasks that help alleviate a specific disability. Emotional support animals, on the other hand, are not required to have any specific training but are permitted in hospitals so long as the owner has control of the animal. Ms. Veazey provided examples of challenges in health care settings such as excitable situations where the dog could be asked to sit outside the exam or operating room, as well as scenarios where other patients have an allergy to the animal. In the latter case, the ADA requires the hospital to continue to accommodate the person with the disability and to find an alternative location for the person with the allergy.

Ms. Wilkins, a personal injury attorney with over 10 years of experience, provided a presentation to the Committee that illustrated the importance of distinguishing between the terms service animal, emotional support animal, and therapy dog. She suggested amending Georgia laws to better mirror the definitions under the ADA.

Ms. Boucher of Delta Air Lines, Inc. provided the Committee with information from the U.S. Department of Transportation and the Air Carrier Access Act (ACAA). Under the ACAA, a service animal is any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support. She went on to explain that documentation may be required of passengers needing to travel with an emotional support or psychiatric service animal.

A wide variety of service animals are permitted in the cabin portion of the aircraft flying to and within the United States; however, most service animals tend to be dogs and cats. Airlines may exclude animals that:

- Are too large or heavy to be accommodated in the cabin;
- Pose a direct threat to the health or safety of others;
- Cause a significant disruption of cabin service; or

- Are prohibited from entering a foreign country.

Ms. Boucher added that Delta is in favor of a national certification standard and has provided public comment during the DOT rulemaking process. Senator Orrock asked about Georgia laws and clarified that no changes are necessary on the state level.

The Georgia Restaurant Association provided commentary on the accommodations made for service animals in restaurants. The GRA indicated that it is not in the business of policing customers but is in favor of exploring opportunities to educate restaurateurs on best practices. The Georgia Food Industry Association provided information from the U.S. Department of Justice to the Committee and explained the interest among retailers in providing customers information in print. Distributing or posting this information should be optional rather than mandatory for members.

Meeting 2 – October 29, 2018

Testimony was provided by the following individuals at the Committee’s second meeting at the Capitol in Atlanta, Georgia:

- Mr. J. Mike Williams, Esq., Attorney with Fowler, Hein, Cheatwood & Williams P.A. on behalf of the Georgia Apartment Association.
- Mr. R. Chris Rustin, DrPH, MS, REHS, Director of the Environmental Health Section and Deputy Director of the Division of Health Protection at the Georgia Department of Public Health.
- Mr. Craig Nielson, Deputy Director, Food Safety Division, Georgia Department of Agriculture.
- Mr. Jay Hamilton, Georgia Manufactured Housing Association.
- Mr. David Roden, Owner and Operator, Mountain View Estates Manufactured Housing Community.
- Ms. Emily Zier, MPA, Service Dog Trainer.
- Ms. Betsy Grenevitch, Guide Dog User on behalf of the Georgia Guide Dog Users.

Georgia DPH added to testimony from Meeting 1 with a PowerPoint presentation detailing its authority to regulate and inspect food establishments. Additional information on “cat cafes” was provided at the request of Senator Kirkpatrick. According to DPH Rule 511-6-1-.07(5)(o)², “live animals may not be allowed on the premises of a food service establishment,” however there is an exception for dogs. In this case, dogs are only permitted in outdoor dining areas, and they must remain by their owner throughout the duration of their dining experience. The dogs are also not permitted to climb on the tables or chairs. The rules have not been extended to include cats because they are much more difficult to control than dogs and prone to carry diseases, including salmonella. Since there are no specific rules and regulations around cats in restaurants, an individual must contact his or her local health department with a proposed business model for a variance. If the model is denied on the local level, the individual may appeal to their state health department for approval.

The Committee received extensive testimony specific to reasonable accommodation request issues encountered in housing from a variety of industry experts. This included information on the fraudulent misrepresentation of service animals to avoid paying “pet rent” and other

² See <http://rules.sos.state.ga.us/gac/511-6-1>.

fees associated with owning and residing with an animal. Suggestions for addressing this issue include limiting accommodations to those recognized under the Fair Housing Act and narrowing the definition of an emotional support animal to that which a health provider has confirmed alleviates one or more symptoms of a disability. Senator Kirkpatrick indicated her interest in requiring in-state physician verification of the disability through written documentation.

Meeting 3 – November 27, 2018

The Committee met a third time on November 27, 2018 at the State Capitol in Atlanta, Georgia. The following individuals provided testimony to the Committee:

- Ms. Dawn Alford, Public Policy Director, Georgia Council on Developmental Disabilities
- Commissioner Mike Roby, Georgia Department of Veterans Services (GDVS)

The Committee briefly discussed options for constructing legislation, including whether to construct one comprehensive bill or to parse out each issue in individual bill drafts. The Committee agreed that definitions should be consistent in each bill to avoid adding more confusion to terms such as service animal and emotional support animal.

Ms. Alford briefed the Committee on the issues faced by the disabled community and the factors to consider should the Committee decide action is needed. In doing so, Ms. Alford recommended that state law mirror federal ADA law, that educational information be created and made accessible to consumers, property owners, and business operators, and that the Committee carefully consider the unintended consequences that could result from any attempts to criminalize the misrepresentation of “fake” service animals.

Commissioner Roby briefed the Committee on how GDVS addresses service and emotional support animals in carrying out their functions. He made it clear that GDVS follows the U.S. Department of Veteran Affairs’ (VA) regulations on guide dogs for the blind, service animals, and emotional support animals (which are not recognized). The VA requires a clinician to evaluate and approve guide dogs and service animals for patients suffering service connected disabilities. No licensing or certificates are required for the animal; however, documentation providing updated vaccinations is required for bringing animals into a VA facility.

GDVS recommended that state law on emotional support animals be nearly identical to federal law on service animals (must have a disability AND animal must be trained to provide a task or service) and follow the “Deardorff” criteria outlined by Wellborn & Wallace, LLC for determining a bona-fide disability diagnosis. The Deardorff criteria requires a mental health professional with an understanding of emotional support animals:

1. Support their conclusion an emotional support animal is needed for the patient based on a DSM-diagnosis;
2. Show how the emotional support animals alleviates a symptom of the disability;
3. State whether the professional observed the emotional support animal and patient together, and, if not, how they concluded the animal alleviates a symptom of the disability;
4. Discuss possible negative effects should the patient not be able to live with the animal (why it is more than just a pet)

Meeting 4 – December 19, 2018

The Committee met a final time to adopt a final report. Senators Butler, Kirkpatrick, and Orrock attended via teleconference. In addition to voting to adopt the findings and recommendations below, the Committee agreed to append a summary document submitted by Ms. Claudine Wilkins, Animal Law Expert and Founder of Animal Law Source; Mr. William Goren, attorney and legal consultant focusing on understanding the ADA so that the clients understand how to comply with that law and related laws; Ms. Dawn Alford, Public Policy Director of Georgia Council on Developmental Disabilities; and Ms. Jennifer Arnold, Founder and Executive Director of Canine Assistants in Milton, Georgia.³

³ See Appendix on Page 11 for this summary document that was added into the record at Meeting 4.

FINDINGS AND RECOMMENDATIONS

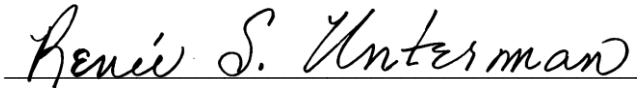
The Committee received testimony from the public and other interested parties, including representatives from the airlines and housing industries, grocery stores, restaurants, state veteran services, and the disability community to help ensure adequate protections exist for Georgians requiring service animals. Based on the foregoing testimony and supporting documents, the Committee issues the following recommendations and considerations for the upcoming 2019 Legislative Session:

- The Committee recommends legislation that shields good Samaritans from liability in cases where an animal is found to be in a “hot car,” and an individual may damage property to save the animal.
- The Committee recommends legislation that implements and makes available educational resources to increase awareness and inform the public and other interested parties on the difference between a “service animal” and “emotional support animal” as well as the fraudulent misrepresentation of such terms and meanings. This may be in the form of signage, literature, and public service announcements that would be made available through a state department for guidance in restaurants, grocery stores, rental offices and their residences.
- The Committee intends to further examine the findings and suggestions submitted by the working group headed by Claudine Wilkins (See Appendix on Page 11). A number of inconsistencies in terminology in Georgia law are highlighted in this summary along with specific examples and references to Code sections. The Committee requests that the Office of Legislative Counsel and the Senate Research Office review these suggestions and follow up with any necessary research that could aid members in determining whether revisions to the O.C.G.A. are necessary to clarify the use of terms and definitions for service animals, emotional support animals, and assistance animals.
- Overall, there are a number of federal laws in place that the Committee received testimony on in an effort to better understand various requirements specific to animals accompanying persons with disabilities in different contexts including the Fair Housing Act, the Americans with Disabilities Act, and the Air Carrier Access Act. In addition, the U.S. Department of Housing and Urban Development (“HUD”) issued guidance to clarify that the Fair Housing Act and HUD regulations allow housing providers to ask for a physician or a medical professional’s documentation stating that an animal is necessary for an individual to alleviate some symptom of a disability when their disability or need for the animal is not readily apparent. Therefore, any legislation drafted as a result of this study should not only be approached with an abundance of caution to avoid any unintended consequences but also to ensure compliance with such federal laws and regulations mentioned in this section.
- The Committee carefully examined options to deter individuals from fraudulently misrepresenting the need for an assistance animal including requiring in-state physician certification, third-party verification, and monetary fines. Although other states have passed similar laws to cut down on misrepresentation, the Committee finds the approaches in other states to be a strong point of contention between lawyers and advocates, especially in the housing industry. Therefore, the Committee recommends that further research be done to avoid introducing legislation that could violate the ADA.

- Finally, the committee appreciates the extensive breadth of knowledge and commitment of advocates who testified and the organizations they represent. Their support to the Committee has been immeasurable and instrumental in comprehending, researching, and analyzing this complicated subject matter.

Respectfully submitted,

**FINAL REPORT OF THE SENATE STUDY COMMITTEE ON
SERVICES ANIMALS FOR PHYSICALLY OR MENTALLY
IMPAIRED PERSONS**



Honorable Renee Unterman, Chair
Senate District 45

APPENDIX

December 17, 2018

RE: Senate Committee for Service Animal Legislation

Dear Madam Chair Unterman and members of the Senate Study Committee on Service Animals:

Thank you for addressing a very important issue in America and in our State. It is a pleasure to offer our expertise regarding the potential service animal bills that are forthcoming in the 2019 legislative session. Collectively, we have attended and/or participated in the senate committee hearings and dedicate much of our practice and professional life to this issue. You have heard from various organizations, individuals and companies. There are a myriad of issues and many more opinions. We felt it was important to narrow down the main issues and highlight the pros and cons for you.

Enclosed you will find several things that summarize the issues:

Table of contents

I. The current federal laws and regulations and the conflicts within those laws & regs

II. How Georgia law conflicts with the Federal laws and regs

III. Proposed Recommendations: What to Consider Doing. We have studied and researched these recommendations and will be eager to discuss further with this committee.

IV. Things to avoid which could have unintended consequences

V. Bios on all of us to show you the work and experience behind this summary

We make ourselves available to consult with you and your fellow lawmakers, moreover, to work directly with legislative counsel in drafting the bills (with your permission).

Regards,

Claudine Wilkins,

Animal Law Expert. Founder of Animal Law Source (www.animallawsource.org)

William Goren,

Attorney and legal consultant focusing on understanding the ADA so that the client understand how to comply with that law and related laws, (www.williamgoren.com/blog)

Dawn Alford,

Public Policy Director of Georgia Council on Developmental Disabilities (www.gcdd.org)

Jennifer Arnold,

Founder and Executive Director of Canine Assistants, Milton, GA (www.canineassistants.org)

I. The Current Federal Laws and Regulations and the Confusion Generated by Those Laws and Regulations

The problem with service dogs is that there are a myriad of federal laws and regulations from different agencies often times using similar terminology but covering very different things. For example, the Department of Justice has explicit regulations at 28 C.F.R. §§35.136, 36.104 talking about service dogs with respect to accessing governmental entities or places of public accommodations (title II and title III of the ADA respectively). However, the EEOC, which is responsible for implementing title I of the ADA, is virtually silent on the issue of service dogs as a reasonable accommodation in the workplace, though the EEOC has acknowledged that a service dog can be a reasonable accommodation. Just this week, the EEOC successfully convinced a lower court that an emotional support animal may be a reasonable accommodation for an employee with a disability. The particular case involved a person with posttraumatic stress disorder who wanted to drive a truck with his emotional support animal.

The Fair Housing Act has its own rules on service dogs. Those rules can be found in the FHEO Notice #FHEO-2013-01 issued on April 25, 2013. The difference with the Fair Housing Act is that while title II and title III of the ADA are limited to service dogs, the Fair Housing Act goes much further to allow for emotional support animals as well.

The Air Carrier Access Act, which is the law that deals with persons with disabilities when flying on commercial air carriers, has its own rules and regulations dealing with service dogs and emotional support animals. Like the Fair Housing Act, the Air Carrier Access Act regulations permit emotional support animals. Those regulations also make an arbitrary distinction between psychiatric service dogs, which are treated like emotional support animals for purposes of the regulation, and service dogs for physical disabilities, which are treated more like service dogs under the ADA. Whether emotional support animals will continue to be allowed under the Air Carrier Access Act is very much up in the air as there is current rulemaking going on at the moment. Many are of the view that the Air Carrier Access Act regulations should track the title II and title III regulations implementing the ADA. Also, up in the air, is whether the arbitrary distinction between psychiatric service animals and service animals for people with physical disabilities will continue. At this time, it is uncertain as to what the final resolution will be with respect to the Air Carrier Access Act.

The Veterans Administration has its own rules with respect to who gets a service dog and how it allows service dogs on its campuses.

Another problem is that service dogs in training are completely a creature of State law and not federal law. So, a service dog in training law can be just about anything state legislators wishes for it to be. However, depending on how those laws are set up, it could make things awfully confusing with respect to ensuring compliance with federal laws and regulations dealing with service dogs that have made it through their training period.

Finally, Georgia law currently does not have any criminal anti-fraud provisions or anti-fraud provisions resulting in damages and/or attorney fees. Many States have one or both of those approaches as a means of deterring people from either interfering with a bona fide service dog or from passing off a dog as a service dog when it is not.

II. How Does Georgia Law Conflict with the Federal Laws and Regulations?

There are numerous conflicts in Georgia law with federal laws and regulations, such as the below:

- 1. In §30-4-1 the term used is “physically disabled person.” That term is far too narrow to comply with the ADA. The definition of a disability under the ADA, 42 U.S.C. §12102, is far broader than what is provided for in §30-4-1.*
- 2. In §30-4-2(a),(b), (c), who gets to be accompanied by a guide dog or a service dog is defined too narrowly so as to be out of compliance with the ADA and its implementing regulations. That is, under the ADA and its final implementing regulations, any person with a mental or physical disability has the right to a service dog. Also, the title II and title III final regulations do not differentiate between a guide dog and a service dog. A guide dog would be just one type of service dog under the regulations.*
- 3. In §30-4-3(a),(b), who is entitled to housing accommodations is defined too narrowly so that it is not consistent with the ADA nor for that matter with the Fair Housing Act. With respect to housing accommodations, the Fair Housing Act rules do allow a landlord to request reliable documentation from a physician, psychiatrist, social worker, or other mental health professional justifying the service dog or the emotional support animal providing the disability is not readily apparent or known to the landlord. No such provision appears in §30-4-3.*
- 4. The first clause of §30-4-3(c) violates both the ADA and the Fair Housing Act. Both the ADA and the Fair Housing Act require modifications of facilities to ensure accessibility for persons with disabilities.*
- 5. §30-4-4 is like many of the other Georgia statute discussed here is too narrow in its coverage. The ADA is far broader than what is covered in the statute. For example, the ADA would apply to any person with a physical or mental disability as the ADA defines disability and not just to the limited list of disabilities contained in the Georgia statutes.*
- 6. Georgia statute does not define service animals. A good place to look for such a definition is 28 C.F.R. §35.136, and in fact, there are States that take this particular section, which also includes permissible inquiries that can be made when trying to figure out if a service animal is indeed a service animal, and layer it into their own State code, albeit sometimes imprecisely (New Mexico and more imprecisely Nevada for example).*

III. Proposed Recommendations – What to Consider Doing

- 1. Consider revising the current Georgia statutes so that they follow the ADA both in terminology and access, and, where applicable, the Fair Housing Act. This isn't that hard to do providing the drafters are knowledgeable about the variety of laws in play. This could serve to reduce confusion and could be a great first step in addressing some of the issues discussed in the hearings.*
- 2. Consider how to use existing capacity in Georgia to conduct service dog education campaigns to help empower businesses to understand their rights and responsibilities under already existing federal law. Examples could include the following: what questions businesses are allowed to ask to determine whether an animal that presents with an individual is a service animal, the fact that emotional support animals are not permitted in places of public accommodation.*
- 3. Monitor the federal regulations process to see if any changes occur with respect to emotional support animals and service animals with the Fair Housing Act and the Air Carrier Access Act.*
- 4. Take a very cautious approach to jumping into any anti-fraud legislation recognizing that there could be a myriad of unintended negative consequences caused by implementing such a law despite the fact that it is well-intended. Use this year to study further what other states have done, if they've had any success, and what potential consequences have resulted.*

IV. Things to Avoid That Could Have Unintended Consequences

As previous testimony before the committee has discussed, criminalizing the passing off of the dog that is not a service dog could have severe unintended consequences. First, many people with emotional support animals are simply unaware that their animals would not be considered a service dog under the rather strict definition of what is a service dog under the ADA. Second, criminalizing such conduct would lead to serious issues with respect to the welfare of the animal. Finally, criminalizing such conduct would impose additional burdens on the Georgia justice system or lead to civil rights violations for people with disabilities.

Finally, if not done properly, a State could possibly subject itself to violations of title II of the ADA and to even constitutional violations (for example, the Washington approach mandating enforcement personnel ask questions and imposing penalties on those who don't respond likely violates title II of the ADA and quite possibly the equal protection clause of the 14th amendment as well).

Below is an example of the anti ADA hysteria out there. The article misstates the final regs and doesn't talk about responsibility of businesses and what they can do.

<https://thetakeout.com/dog-owners-ada-loophole-dine-out-with-pets-1831048894>