



Protection & Advocacy Project

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Senate Agriculture and Veterans Affairs Committee
Senate Bill 2222- February 13, 2025
Testimony of Micah Olson, P&A Position-In Opposition

Mr. Chairman, members of the committee, my name is Micah Olson. I am an attorney at Protection & Advocacy. I am speaking in opposition to Senate Bill No. 2222. I am here today to discuss concerns with this bill.

There are three federal laws that relate to assistance animals and service animals. The Fair Housing Act and Rehabilitation Act of 1973 both relate to housing and allow for reasonable accommodations and modifications for disabilities. One possible accommodation is an assistance animal. Assistance animals can assist disabled individuals with one or more tasks. Emotional support animals are a type of assistance animal. Assistance animals are limited to an individual's home. They do not have a right to be in a public place, hotel, or public transportation. There is no certification to be an assistance or emotional support animal. Assistance animals are often dogs or cats, but there is not a specific limitation on the type of animal an assistance animal can be.

Under the Americans with Disabilities Act (ADA), a service animal is a dog or miniature horse that assists a disabled individual with one or more tasks. Service animals can go anywhere the general public can go, including stores, restaurants, and other public places. Service animals are often trained to become service animals, but the ADA does not have specific training requirements.

Section 2 (1) (a) requires an individual who provides documentation supporting the need for an assistance animal to be licensed to practice medicine in North Dakota. Although "health care provider" is defined in this bill, it is unclear if this subsection permits mental health professionals such as licensed counselors, therapists, and psychologists, who would be qualified to identify the need for an assistance animal, to provide documentation.

Secondly, requiring the medical professional to be licensed in North Dakota would adversely affect individuals moving to the state who require assistance animals. The requirement would not be feasible for new North Dakota residents, as they are unlikely to have established a medical provider immediately upon

moving to North Dakota. Additionally, the individual may not have health insurance immediately upon moving to North Dakota, making it unfeasible to go to the doctor for the required two visits to establish a need for an assistance animal. Also, the need for an assistance animal may not be immediately obvious to a new medical provider, which would cause further delays. A legitimate medical provider in a different state who has an established relationship with the individual should be permitted to provide any documentation needed so the individual may immediately utilize an assistance animal, which may be a necessary accommodation for an individual. Additionally, an individual may see an out-of-state specialist for medical care. Even though such a specialist would be qualified to assess the need for an assistance animal, this bill would not allow the specialist's expertise to be considered.

This requirement also has implications under the Privileges and Immunities Clause of Article IV of the US Constitution. The Privileges and Immunities Clause ensures equal protection under the law, protects fundamental rights, including the right to travel, and discriminates against out-of-state citizens. A requirement the medical provider be licensed in North Dakota has no legitimate purpose and does nothing to protect the citizens of North Dakota.

Section 2(1)(a) is contradicted by Section 4(2), which allows for supporting documentation to be provided by a physician or medical professional who does not operate in this state solely to provide certification for service animals. This subsection does not appear to allow out-of-state medical professionals to provide this documentation for assistance animals. There does not appear to be a rationale for this distinction.

Next, Section 2(3) and (4) prohibits health care providers and individuals in general from misrepresenting an individual has a disability. Protection & Advocacy opposes these subsections, as there is possibility of a health care provider or advocate could be held liable for relying on incorrect information when assisting an individual seeking an assistance animal, unintentionally violating these subsections. Health care providers and advocates should not be penalized for acting in good faith.

Protection & Advocacy also opposes Section 2(5), which requires tenants to renew their documentation annually. A disability is likely to be ongoing, and a presumption an assistance animal will not be needed in a year does not have a basis. This is an unnecessary burden for tenants.

Section 3, regarding the sale of an assistance animals does not appear to accurately reflect the nature of an assistance animal. Assistance animals are generally not certified as assistance animals or typically sold for the specific purpose of being an assistance animal. A seller may not know an individual is using the animal as an assistance animal. This section appears to suggest the sale of all animals should include a notice regarding assistance animals.

Section 4(1) providing a landlord may require reliable supporting documentation if a "tenant asserts a disability requiring a service or assistance animal" is already understood in federal law and guidance from the US Department of Housing and Urban Development (HUD). Housing providers can already request documentation when there is not an apparent connection between the tenant's disability and a requested

accommodation or modification.

Section 4(2) states in part, “A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord. Protection & Advocacy agrees with this sentence, as it reflects HUD guidance.

This bill is unnecessary, as federal law already permits housing providers to request reasonable documentation to support the need for an assistance animal when there is not an apparent nexus between a disability and requested accommodation. This bill adversely affects individuals who rely on assistance animals, particularly those moving to North Dakota from out of state. It can also place a chilling effect on medical providers and advocates who act in good faith. Protection & Advocacy requests a Do Not Pass recommendation and is also providing four fact sheets regarding federal and state law about service animals and assistance animals for reference.

Service Animals

What is a Service Animal?

Under the Americans with Disabilities Act (ADA), a service animal is “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals under the ADA. However, the ADA does include miniature horses in the definition of service animals, providing that the horse has been individually trained to do work or perform tasks for the individual with the disability. There is also a maximum size and weight restriction for a miniature horse that acts as a service animal. The work or tasks performed by a service animal must be directly related to the individual’s disability.” 28 C.F.R. §§ 35.104 and 36.104.

Under North Dakota law, a service animal is “any dog trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability. The term includes a dog trained to provide assistance to an individual with a disability, pull a wheelchair, lend balance support, retrieve dropped objects, or provide assistance in a medical crisis.” N.D.C.C. § 25-13-01.1.

What are the Responsibilities of Owning a Service Animal?

The service animal must be under the control of its owner. This can be accomplished by harness, leash, or voice control. If the service animal is not under control and the owner fails to take effective action to control the service animal, or the service animal poses a direct threat to the health or safety of others, it is allowable to require the animal to be removed from the premises. The animal must be “house broken.” The owner must also comply with local animal control and public health requirements, such as up-to-date vaccinations and licensing.



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How Do Service Animals Assist People with Disabilities?

- Guide Blind people or people who have low vision
- Alert Deaf people or people who are hard of hearing
- Provide non-violent protection or rescue work
- Pull wheelchairs
- Assist an individual during a seizure
- Alert individuals to the presence of allergens
- Retrieve items such as medicine or the telephone
- Provide physical support and assistance with balance and stability
- Help persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors

Are Owners of Service Animals Required to Have Documentation?

An owner of a service animal cannot be required to show documentation of the animal's certification, licensure, or training by a state or local government or animal trainer. It's not required that a service animal is professionally trained. All that can be asked of the owner are two questions:

- Is the animal required because of a disability? (This does not mean that the owner must disclose their disability.)
- What task or work is the animal trained to perform for you?

Additional Resources

- [ADA National Network's Service Animals and Emotional Support Animals](#)
- [U.S. Department of Justice's Frequently Asked Questions About Service Animals and the ADA](#)
- [U.S. Department of Justice's ADA Requirements: Service Animals](#)

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Assistance & Emotional Support Animals

What is an Assistance Animal?

- An assistance animal provides assistance, performs tasks, or provides emotional support for the benefit of a person with a disability.
- An assistance animal is not a pet.
- An assistance animal may be a reasonable accommodation under the Fair Housing Act.
- Unlike service animals under the Americans with Disabilities Act, an assistance animal is not necessarily limited to a dog or miniature horse. It may be another kind of animal.

What are Emotional Support Animals?

- A type of assistance animal.
- Animals that are identified as emotional support, comfort, companion, or therapy animals are not considered service animals under the ADA. This is true even if there is a medical treatment plan that includes the use of such animals.
- While these animals may provide companionship, relieve loneliness, or help with depression, anxiety, and certain phobias, they do not have the specialized training to perform tasks that assist people with disabilities, nor are they limited to working with people with disabilities.

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Where Can Service Animals, Emotional Support Animals, & Assistance Animals Go?

Where Are Service Animals Allowed?

The ADA requires state and local governments, including public schools, colleges and universities, public accommodations, and commercial facilities to allow service animals to accompany their handlers in all areas where members of the public are allowed to go.

Similarly, North Dakota's law entitles an individual with a disability to be accompanied by a service animal in places of public accommodations.
N.D.C.C. § 25-13-02.

Examples of public accommodations include restaurants, theaters, hotels, grocery stores, hospitals and medical offices, department stores, malls, health clubs, parks, zoos, sporting facilities and all public transportation systems such as airports, car rentals, trains/metro systems, buses/shuttles, and demand-response transportation services, such as taxis, limos and rideshare.

Are They Allowed in Public Transportation?

A public transportation provider cannot deny access, even if there is a "no pets" policy and cannot require the individual to pay additional fees or to sit in a particular area with the service animal.



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Are They Allowed on Airplanes?

Under the Air Carrier Access Act (ACAA) carriers must allow a service animal to accompany a passenger with a disability. 14 C.F.R. § 382. In this capacity, a service animal “means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” Animals other than dogs are not considered service animals. Emotional support animals are not allowed under the ACAA. Carriers may require passengers traveling with a service animal to provide documentation. Airports are generally covered under the Americans with Disabilities Act.

Are They Allowed in Schools?

Under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, a student may be permitted to have an animal in school that does not meet the ADA definition of a service animal, providing that the IEP or Section 504 team has determined that the animal is necessary for the student to receive a free and appropriate education.


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Housing Rights

Service, Assistance, & Emotional Support Animals

Where are Service Animals Allowed?

The Fair Housing Act prohibits discrimination against an individual with a disability in **renting or buying** residential property, **even if the building has a “no pets” policy**. This includes “a refusal to make reasonable accommodations in rules, policies, practices when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” [42 U.S.C.A. § 3604\(3\)\(B\)](#).

According to the [United States Department of Housing and Urban Development \(HUD\)](#) assistance animals are an example of a **reasonable accommodation** for a tenant with a disability. In this capacity, “An assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability. **An assistance animal is not a pet.**” Refusing to allow a tenant with a disability to have an assistance animal or charging a fee for the assistance animal are examples of **disability discrimination under the Fair Housing Act**.

Can Landlords Require Tenants to Provide Documentation?

- Housing providers may ask individuals with non-apparent disabilities for documentation of a disability when requesting an accommodation for their assistance animal.
- Housing providers may not ask individuals with assistance animals to provide documentation of their disability if the disability is apparent.
- Housing providers may not ask for documentation of the disability-related need for an assistance animal if the need is readily apparent or already known.



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What Kind of Documentation Should I Provide?

The [documentation](#) should establish that the individual has a disability, and the animal will provide some type of disability-related assistance or emotional support.

Can a Person with a Service Animal or Assistance Animal Visit Someone Who Lives in a Rental Unit?

A person who has a service animal or assistance animal may visit someone who lives in a rental unit. Tenants have the right to have guests, and it is a **reasonable accommodation** to allow a person who uses a service animal or assistance animal to bring the animal to the property. The person who uses the service animal or assistance animal has the right to access the tenant's home and common areas of the property. **Landlords cannot discriminate against the tenant or guest or charge a fee for the animal.**

What can I do if I'm being discriminated against?

- [File a complaint with the ND Department of Labor.](#)
- [Report housing discrimination to HUD.](#)

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