

2017 HOUSE POLITICAL SUBDIVISIONS

HB 1272

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1272

1/27/2017

27541

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Donna Whetnam

Explanation or reason for introduction of bill/resolution:

Resulting to reasonable accommodations for service animals in rental dwelling units; and to provide a penalty.

Minutes:

Attachments 1-14.

Chairman Klemin: Opened the hearing on HB 1272.

Rep K. Koppelman, District 13: Introduced HB 1272. This bill deals with specifically with the issue of service animals. The reason for the bill as in the state law and federal law, as a landlord you can have restrictions on places you rent, you can have policies like no pets however, there has to be provisions for people who need a service animal or with a disability to have an exception to that. The problem is that it has been abused by people who really don't qualify for that kind of an exception. We want to protect the rights of those who legitimately have this need, we also want to not allow the people who don't really need it to have that exception. The bill will tighten the law a little bit on this issue and have some consequences for someone who falsely claims to have a condition that requires a service animal. We have done that in a couple ways in the bill, one is through definition and another is to add a criminal penalty which would be a Class B misdemeanor if a person falsely claims to have the need of a service animal. The piece of the bill would be a fee which could be a damage fee in rental circumstances. What the bill attempts to do to ensure the rights of those who need to be protected and to make sure no one else is abusing those rights. Federal law is much more broad. But the problem seems to be, that there is an individual that went on line and in a matter of minutes who got diagnosed as depressed and certified for a service animal. People are going on the internet and for a few dollars they can find a social worker in California, for example, to say "yes" you need one of these. This is the kind of abuse we are trying to avoid. 06:15

Rep. Beadle: The language about the documentation must originate from medical professional licenses certified in this state but we are on a border city. Are you familiar with whether or not most psychologists or behavioral health people licensed in the Moorhead side of the river, do they typically also have licenses in North Dakota. With the terms of our colleges we have a number of students that cross the river consistently.

Rep K. Koppelman: That is something we thought about, being aware of the border situations and that why the word certify is in there so if someone has a physician in Moorhead or East Grand Forks and I assume many of them are licensed in both states. If not they may have an affiliation with a clinic or organization that is on both sides of the river.

Chairman Klemin: The part on eviction is done in district court the municipal court wouldn't have any jurisdiction over the conviction. How do you prove that a person does not have a disability?

Rep K. Koppelman: If we set forth parameters in this legislation and the Federal law is very vague, we are trying to get away from the abuse we are talking about. I assume that by looking at that certificate to see if it is fraudulently done and it came from someone on the internet and not from the state it would be fraudulent.

Chairman Klemin: If there are people now who have service animals and have documentation that is not from a medical North Dakota certified professional and this bill became law, would they have to go get it?

Rep K. Koppelman: Yes as this bill stands now they probably would. If they have a lot of abuse of this they would like to deal with it. We could be an effective date on the bill and say prospective.

Rep. Ertelt: Why the Class B misdemeanor instead of just a civil penalty?

Rep K. Koppelman: When I first introduced the bill I put it in as a Class A misdemeanor and we felt it was too steep. We went to the Class B misdemeanor thinking that would be more reasonable and could be dealt with in municipal court.

Rep. Ertelt: Is the damage fee entitlement comparable to a security deposit for having an animal within the dwelling today?

Rep K. Koppelman: The way the bill is written the fee would be a penalty assessed if someone were found to have fraudulently done this.

Jeremy Petron, lobbyist for ND Apartment Association: In support of HB 1272. (See Attachment #1). 12:41-16:19

Rep. Ertelt: Regarding the \$1000 fee that might be assessed to someone fraudulently disabled is that in line with what is charged within an apartment building that does allow animals typically? I understand that it can vary.

Mr. Petron: It does vary from \$300, \$500 and up to \$1000 for differing companies.

Chairman Klemin: I thought there was a statute on additional security deposits for animals?

Mr. Petron: There has been Legislation last session it was an equivalency of up to 1 months' rent. referenced Chapter 14-02.4 (See Attachment #2)

Rocky Gordan, Lobbyist for the North Dakota Apartment Association: (Testimony from Greg Thompson) I am here for our attorney who could not be here today (See Attachment #3). My comments are directed to those who are abusing the system and not to the disabled who need the service or companion animal. We have gone through many issues that morphed into the typical situation where an abuser rents an apartment with a pet and then when they get caught they ask for an accommodation for a disability and get a note from a physician to be able to keep the animal or to a website to get the certificate for a companion animal. You can pay online and get a certificate within an hour. Our national association has tried for years to address this issue on the national level. It has not happened. This may not be the perfect bill by we support a do pass on HB 1272. We are open to changes if they need to be made.

Chairman Klemin: Any other testimony in support of HB 1272? Seeing none. Any opposition to HB 1272?

Max Blosser, Grand Forks Citizen: In opposition to HB 1272. (See Attachment #4) 23:50-28:00

Rep. Ertelt: Your suggestion is to simply remove the out of state requirement or the in state certification?

Mr. Blosser: I think that is a major part of it however the language also suggests that it needs to be medically licensed provider. In the Federal Fair Housing Act someone such as a Social Worker or Case Manager is able to do this as well. So I think some of that language absolutely should be changed.

Kelly Gorz, Fair Housing Specialist at High Plains Fair Housing Center in Grand Forks: In opposition to the wording of HB 1272. (See Attachment # 5) 28:50-33:50.

Chairman Klemin: Your testimony is focused on the certification or documentation that is required, what about the penalty part of this? One is a Class B misdemeanor and the other is a damage fee of \$1000. Did you have any thoughts on that?

Ms. Gorz: We feel that is a bit harsh. We do support something to go against fraud in the state, but not such a harsh criminal offense and possibly like other states have implemented people doing community service and things like that.

TJ Jerke, North Dakota State Director for the Humane Society of the United States: In opposition to HB1272. (See Attachment #6 and #7). 35:09-40:06

Chairman Klemin: Any other opposition to HB 1272? Seeing none, any neutral testimony?

Michelle Kommer, Commissioner of Labor: Neutral testimony to HB 1272. (See Attachment #8). 41:00-46:17

Rep. Hanson: Is there an estimate on the financial impact that this would have to the budget?

Michelle Kommer: It has been averaging about \$125,000 per year. So in the biennium it is about \$250,000. Upon passage is when our cooperative agreement would end so that would potentially deprive us of the opportunity for funds in the current biennium.

Rep K. Koppelman: If I am not mistaken the information you received was prior to the new administration and prior to Dr. Carson being approved of being the new director of that agency. Secondly in your testimony I want to clarify Federal Law permits documentation from a variety of sources and Federal simply states a qualified professional and in your footnote. But the specifics that you are referring are not in Federal law but in a guidance document written by the bureaucracy within the agency you are speaking of, is that correct?

Michelle Kommer: I will have to verify that. I will go back to the footnote and it is footnoted to reference the 2004 joint memorandum between HUD and the Dept. of Justice.

Rep K. Koppelman: But to clarify it is not Federal law but it is a document from Washington DC bureaucracy basically giving guidance to this administration.

Michelle Kommer: When I am speaking about Federal Law what I am speaking of is the language from the Fair Housing Act, directly from the Americans with Disability Act and directly from the Federal Rehabilitation Act and also directly from case law. So I can provide you those references when combined we need to conclude that there is certainty that if this bill passes as written we will lose our substantial equivalency status.

Rep K. Koppelman: We will continue to investigate, when you do that please site what is actually statutory language, which is what we consider Federal Law.

Michelle Kommer: Absolutely. We did have a conference call with HUD on Monday of this week, post new administration we were able to review the matter. In order for the new administration to influence the matter that we are discussing today, there would be a need for a change in both Federal Law and case law that interprets this. Certainly it is possible that there would be a shift in how this matter would be interpreted. I would imagine that process would take a significant amount of time.

Jenny BrodKorb, Great Plains Assistance Dogs Foundation, Director of Service Dogs of America: Neutral testimony for HB 1272. I have provided documentation on definitions, Federal Law, and resources that go with them. (See Attachment #9, 10,11,12,13). 50:45-54:28.

Rep K. Koppelman: You talk about the therapy animal team, you said there is no protection for those with regard to fair housing? It probably shouldn't be mentioned in the bill at all, because the team would be the human and the animal and that wouldn't be a housing situation. That would be an intervention or a treatment of some kind.

Ms. BrodKorb: Yes, when I was doing mental health counseling we used something called equine assisted psychotherapy where you would go and work with horses or also canine assisted psychotherapy. Were you would bring a therapy dog team or animal team into a group setting. Typically, if someone is telling you they have a therapy animal they either don't understand the language or they may be trying to abuse the reasonable

accommodation clause. My contact details are provided in the packet if you have any questions and I am here only to provide you information. I would like to see some of the language nearer to the Federal Law. There is need for clarification and education.

Rep K. Koppelman: Virtually everyone that has testified said they appreciate what the bill is attempting to do, some don't like certain pieces or wording. If the current Federal Law is vague enough that it is allowing for the abuse that we have heard about. Do you have any recommendation on what might achieve the goal without having some of the issues that has been talked about?

Ms. BrodKorb: In the fourth paragraph under acknowledgments I have listed the states that do have fraudulent representation legislation. I have also provided a hyperlink which will take you directly to those and it will share all the language as it relates to all of those so you don't have to go and research. If you need assistance in finding information I would be happy to provide that for you. There are states that have great success with the language that they have put forth. Many of the states mirror the Federal Laws quite closely. My answer in you in trying to remain neutral is that I have provided this table for you and that language is there as well their Century codes to go along with that are also provided.

Mary Douglas and Kyle Hackney, Professors at North Dakota State University. (See Attachment #14) was handed out – no testimony

Chairman Klemin: Any other neutral testimony? Seeing none. Every one seem to be saying they recognize an abuse. To cure that we need to have a statute that doesn't violate federal requirements and is fair to both the landlord and the tenant. I will appoint a subcommittee to work on some language for this bill consistent with the HUD requirements. Rep. Zubke would you chair a subcommittee on this bill and I also appoint. Rep. Beadle: Rep. Hanson subcommittee. When you do work on this bill please let the testifiers know so they can come if they desire and listen to your deliberation and if you need some assistance from them they could be there to answer any questions you may have. Closed the hearing on HB 1272.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB 1272
2/2/2017
Job # 27840

☒ Subcommittee
☐ Conference Committee

Carmen Hickel

Explanation or reason for introduction of bill/resolution:

Relating to reasonable accommodations for service animals in rental dwelling units; and to provide a penalty

Minutes:

1

Subcommittee meeting on HB 1272

Rep. Zubke, Rep. Hanson, Rep. Beadle were in attendance.

Rep. Zubke: Discussed information that the Commissioner of Labor for ND received from the US Dept. of Housing and Urban Development, along with handout #1.

Rep. Hanson: I like how we instead of enacting a new section we are modifying the current statute relating to disability documentation for assistant animals. I also like that we are not limiting the type of person who can provide the certificate to only physicians and only physicians in ND. I like section 2 how it is a penalty for furnishing fraudulent disability documentation. Another concern I had was how can we prove that someone is lying about a disability? The concern I have with the proposed change that it's a Class B misdemeanor which could have a possibility of 30 days in jail. I would change it to, guilty of an infraction, which is lower than a Class B.

Rep. Zubke: Are you saying change the title on Section 2?

Rep. Hanson: I like the title but on lines 41 and 42 where it says, falsely claims to have a disability, that we carry over that same language.

Rep. Beadle: I agree with Rep. Hanson, also what do we feel about the lesser damage fee of \$1000? To me that sounds like it could be onerous especially if you are dealing with an older unit, where they have \$350 a month of rent and then we add a flat fee.

Rep. Zubke: I did give that some thought too. I wouldn't have a problem with the one month rent or if we put a cap on it.

Rep. Hanson: I wonder if we could create more flexibility with that line by saying, the lessor is entitled to a damage fee, and rather than saying an amount or one month's rent which might not even cover the damage.

Rep. Beadle: We could also look at the lessor is entitled or may set up a policy for a damage fee. That allow flexibility to have a policy established but something that is clearly defined ahead of time. Most landlords should have all of their fees filled out in the lease document when they rent to an individual.

Rep. Zubke: My concern is if we leave it to ambiguous is then everybody is going to get tied up.

Rep. Beadle: That is why I would lean towards a one month rent.

Rep. Zubke: Would you agree to one month's rent not to exceed \$1000? Then lowering the Class B misdemeanor?

Rep. Hanson: I like the language, up to or not to exceed \$1000.

Rep. Beadle: I would support that.

Rep. Zubke: Ok, one month's rent not to exceed \$1000. How do you feel about lowering the Class B misdemeanor to an infraction?

Rep. Beadle: I don't like jail time automatically being associated with it. I would support lowering it to an infraction. So a Class B misdemeanor maximum penalty is 30 days' imprisonment, a fine of \$1500 or both. An infraction is maximum of \$1000 and any person convicted of one year prior to the commission of the infraction that infraction is upgraded to a Class B. I would support that as there is only \$500 difference but does not have jail time.

Rep. Zubke: If we make those changes under the penalty section. Then under the disability documentation section you're OK with inserting the language, not operating primarily to provide certification for assisted animals?

Rep. Beadle: I'm good with that.

Rep. Zubke: Any other concerns with this?

T.J Jerke, State Director of Humane Society: I was asking Labor and Human Rights Commissioner when we are looking at the damages. Currently landlord and property owners can assess a damage fee when it comes to animals in their dwellings. My question was differentiating the two. The damage is a penalty and the damage over is the physical damage. That can already be tacked on and assessed.

Rep. Beadle: As long as we make sure this damage fee is specifically tied to fraudulent documentation being provide. Then do you think that would cover to make sure we are not doubling up on damage?

Mr. Jerke: I think so.

Rep. Beadle: It is making sure we are not double dipping on the damage?

Mr. Jerke: You can already assess the physical conditions when animals disrupt the property.

Rep. Beadle: In the penalty there is, falsely claimed, in two different lines. So we want to make sure we adjust that, so the language, fraudulently providing documentation, is in there. In the bill itself it is in lines 16 and 21. In the amended version it will be line 41 and then what would be line 43.

Rep. Hanson: Are you comfortable with lowering it to an infraction?

Rep. Zubke: Yes, I am. I will go ahead and do this and decide if we need another meeting from there. Adjourned the meeting.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB 1272
February 10, 2017
Job # 28233

☐ Subcommittee
☐ Conference Committee

Came Hick

Explanation or reason for introduction of bill/resolution:

Relating to reasonable accommodations for service animals in rental dwelling units; and to provide a penalty.

Minutes:

1

Chairman Klemin: Opened for committee work.

Rep. Zubke: (Proposed amendments #1) Discussed the subcommittee meeting and proposed amendment.

Rep. Zubke: Moved the amendment to HB 1272 (amendment #17.0593.02001)

Rep. Longmuir: Second the motion.

Rep K. Koppelman: I am concerned about the language in 47-16-07.5 that was added. I think it may need some work. The phrase, who does not operate primarily to provide certification for service or assistance animals. But I don't know anyone that operates primarily for that purpose. Maybe to say, who does not operate in this state primarily to provide, they go on line and get someone out of state to send a certificate for \$100.

Rep. Beadle: The reason we left the language was when we looked at trying to restrict out any of the Social Workers or Counselors, or any other people, if we remove this language then we start running into conflict with FHA and Fair Housing Requirements.

Voice vote #1 adopted the amendments.

Rep. Hanson: Proposed a further amendment, starting at the 3rd line from the bottom, I would like to replace the words, provides fraudulent disability documentation to is found guilty of furnishing.

Chairman Klemin: So if the lessee was not found guilty the lessor could not evict that lessee?

Rep. K. Koppelman: What was first suggested was a Class C felony and when I was asked to introduce the bill I resisted that and that is why it ended up as a Class B misdemeanor? The amendment has reduced it to an infraction and I am okay with that. What most land lords are after is if someone is using fraudulent means to have a pet in their apartment in a no pets building and don't have a bona-fide disability that they should be able to evict them. If this amendment passes it would require everyone to go to court and that was the intention of the bill.

Rep. Hanson: Moved amendment #2 on page to replace "provides fraudulent disability documentation" and add "is found guilty of furnishing."

Rep. Beadle: Second the motion.

Rep. Zubke: I am going to resist the motion to amend. This did not come up in the committee I felt we had a good resolution and I would like to see the bill to stay intact as it came out of the subcommittee.

Voice vote #2 failed.

Rep. Maragos: Moved do pass as amended

Rep. Zubke: Second the motion

Do pass as amended 12 yes, 2 no, 1 absent.

Rep. Zubke: Will carry the bill

February 10, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1272

Page 1, line 1, remove "a new"

Page 1, line 1, replace "to chapter 47-16" with "47-16-07.6"

Page 1, line 3, after the semicolon insert "to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling;"

Page 1, replace lines 5 through 22 with:

"SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

Renumber accordingly

Date: 2-10-17
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1272

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 17.0593.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

Date: 2-10-17
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1272

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 3rd line from bottom replace "provides fraudulent disability documentation" and add "is found guilty of furnishing."

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Hanson Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin			Rep. Guggisberg		
Vice Chairman Hatlestad			Rep. Hanson		
Rep. Beadle					
Rep. Becker					
Rep. Ertelt					
Rep. Johnson					
Rep. Koppelman					
Rep. Longmuir					
Rep. Maragos					
Rep. Pyle					
Rep. Simons					
Rep. Toman					
Rep. Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote Failed

Date: 2-10-17
Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1272

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Maragos Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg		/
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker	/				
Rep. Ertelt	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons	/				
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 12 No 2

Absent 1

Floor Assignment Rep. Zubke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1272: Political Subdivisions Committee (Rep. Klemm, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1272 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new"

Page 1, line 1, replace "to chapter 47-16" with "47-16-07.6"

Page 1, line 3, after the semicolon insert "to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling;"

Page 1, replace lines 5 through 22 with:

"SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

Renumber accordingly

2017 SENATE POLITICAL SUBDIVISIONS

HB 1272

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1272
3/16/2017
Job 29297

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to disability documentation for service or assistance animals in a rental dwelling; and to provide a penalty.

Minutes:

Written testimony #1 Jeremy Petron
Written testimony #2 Kelly Gorz
Written testimony #3 Michelle Kommer

Chairman Burckhard opened the hearing on HB 1272. All senators are present.

(1:28-3:51) Jeremy Petron, Lobbyist ND Apartment Association, in support of HB 1272. Written testimony #1.

(3:56-9:37) Rep. Kim Koppelman, District 13, West Fargo, introduced HB 1272. No written testimony. This bill came about at the request of the landlords in ND. This issue really deals with the whole issue of service animals and animals that are necessary for some people to go about their daily duties. Federal and state law, require landlords even if they have a policy in their rental units, to allow those kinds of service animals, if they have proper documentation indicating that there is a need for them. What has occurred however, is that the federal statute is very vague. All the federal statute says is "the certification needs to come from a qualified professional". So the question is what does that mean? In the House we had the subcommittee actually in the Political Subdivisions in the House, and they took a very cautious approach. If you would be willing to hold this bill, for a little while, I would like to bring a proposed amendment to what the House did, that would just change it slightly. I think there is some issue with the amendment that was provided in the House. The way the original bill read, may have been too strong. It talked about a qualified medical professional licensed in this state. Now when I put that in the bill I knew that that might need some work. But the premise, the whole reason for this effort is that people are getting these certifications on the Internet, from anyone who you deem a qualified professional. So there is a lot of fraud, I hate to use that strong of word, or perhaps deceit going on. The landlords are saying hey if we have a no pet building or a no pet house that we are renting out or an individual person who rents property out, and wants to say you shouldn't have a pet unless you have a bona fide medical or psychological need for that, how do you certify that? As soon as the bill was introduced, Washington begin rattling sabers and I heard from our new Labor Commissioner that she had already heard from the Department of Housing and Urban Development. We

know that happens from time to time. They are worried about their interpretation of federal law, the bureaucratic interpretation, not the law itself on the federal level and this might run a fowl of that. Actually visiting with people both in DC and here in ND from Sen. Hoeven's office about this, that's why I would a little bit of time if it's feasible in your schedule to be able to complete that dialog. We make a strong a bill without running a fowl of what the FEDS may require. The substance of the bill and the intent of the bill is to say that if you have a documentation from a qualified professional, and perhaps the language licensed in this state is to narrow, you might find a better way to state that.

Sen. D. Larson: I've always been curious about this. What if there are two competing interests? What if someone needs a cat, and somebody right next door is terribly allergic to cats? Does one trump the other? How does that work?

Rep. Kim Koppelman: That is a really good question. I think maybe the folks who do landlord work every day, might be able to answer that. I know there are people who want to have a no- pets, policy for an apartment or house that they are renting out for obvious reasons. Then if someone comes along waving that certificate they are allowed to have a pet. Now again I want to emphasize, if they have a legitimate need, absolutely that is why the law is there. But I think it's been stretched beyond recognition and that's what we need to repair in this legislation. I urge you to pass the bill once we get it fixed.

(11:48-14:00) Jeremy Petron continued with his written testimony #1. We urge a Do Pass on HB 1272 with the suggested amendments.

Chairman Burckhard: It sound like you've been in the business awhile and probably seen abuses of it, and ones that are legitimate. What happens though if you have two neighbors and one has issues with their pets because they fight like cats and dogs? What happens then?

Mr. Jeremy Petron: Those situations get complicated and to the question about if somebody has allergies and somebody else has an animal next door? In those types of situations, we have to look at in terms of what is reasonable and what type of compromises can we come too. Are there other available units further away that one of them would be willing to move into? In our case we're lucky enough to have other properties that we manage that we might be similar and can possibly move them into another building. Then it comes down to who was there already first, and who is less likely to be impacted from having to move, and can we help with those situations. It does happen and we just try to look at what is the most reasonable compromise in those situations.

Sen. D. Larson: Going back to that allergy issue, what if I have a severe allergy to cats and I own an apartment building that I want to rent out. If the renter leaves I won't be able to go back into that apartment to do anything to it, because I can't be around that dander. Would an apartment owner have anything to do to say go ahead and have your dog, but you can't have a cat? Would there be any accommodation to even an owner that can't be around it?

Mr. Jeremy Petron: Unfortunately, the Fair Housing Law encompasses any owner who that has more 4 units. So the owner would have to comply even if they themselves have a disability as far as allergies go in that situation.

Sen. J. Lee: I just wondered if you find that there are certain medical professionals who are more likely to sign these letters than others in your experience, and since you have so many units. I thought there might some people who are a little more casual about it? I am not asking for names, just asking if you encounter that?

Mr. Jeremy Petron: That does seem to be the case. I think word has sort of getting out amongst the medical field more of how it used to be looked at as this was not a big deal. From my experience it seemed like they were handing them out like candy. But I think now they are starting to understand the consequences that this does put on landlords and so there are not as many but it is still happening.

Sen. J. Lee: This is just a suggestion, but have you visited with Courtney Kobel at the ND Medical Association, it might be good to send out a little newsletter to all of the physicians that are a part of that organization explaining what the importance is of this and what is going on? I am sure she would be happy to visit with you about it. It couldn't hurt. The problem is that there are people who are doing this, who aren't thinking about it. That's a big deal.

Mr. Jeremy Petron: That's a great suggestion as we actually have not had open dialogue with the medical community on that. But we will certainly pursue that.

Sen. Anderson: What was the really objection in the House to have it a person licensed in ND because it seems like for almost everything else, to do with North Dakota's we require the individual to be licensed here, so what did you hear over there for that?

Mr. Jeremy Petron: The contention with that was that the language or wording would not have substantial equivalency with what the Federal HUD regulation recommends as far as the statute that's written on that. That was the issue that came up.

Sen. J. Lee: So the Feds won't let us stay licensed in ND?

Mr. Jeremy Petron: From what I understand it conflicts with the language that is in the Federal statute and the federal trumps state law and that's where the contention came in.

(20:06-23:05) Rocky Gordon, Lobbyist with the North Dakota Apartment Association. No written testimony. But a couple of comments on a couple of questions if I might. The issue brought up by Sen. Anderson and I think with Michelle the Labor Department is here, I think they said you can't do it, but you'll lose you your federal funding for Fair Housing. Enforcement was the issue, I don't know if they can flat say that you can't do it, but they say they can go after the money. So, the one other area I wanted to comment and I think it was Sen. Larson's question. I've been doing this for 38 years, and this has been around for a long time. We've tried to deal with this and you get into those situations just like you described where two people are impacted and it's up to us to figure who is impacted the least or what we can do to resolve it. Those are sometimes very difficult issues and the problem of course from our point of view, is no one is going to tell us if we get it right we are only told if we get it wrong. It puts us in a difficult situation sometimes. Not that this bill is going to address that as it's not, but, what we would simply ask is with the whole premise of this bill is a deterrent to abuse of what is a necessary law for people to live their lives. We understand that we're not attempting

to go after that at all. It is simply the abuse. Sen. Lee's point about trying to work with the medical community and we have tried to do some of that. We haven't had much luck and maybe we didn't do it properly and I think we should take your suggestion and maybe try it again. We will attempt to do that as an association.

Sen. J. Lee: I don't think you probably did it wrong, but sometimes you have to run it up the flagpole again. I think it's worth doing that and approaching it from the standpoint that abuses are happening and in talking about what you just said, that if we want the people who need those animals to have them, but that there are folks who are getting permits easily when they don't really seem to need them. As for help in this partnership to make sure the people who really need it get it.

Mr. Rocky Gordon: I agree with that wholeheartedly. The one other thing I was going to mention is we talked about the access on line. It's a slam dunk, answer 5 questions and send in \$99 and away you go. That's the way it is today.

Sen. Anderson: This language on page 1 it says, "who does not operate primarily to provide certification for services or assistance animals", I am wondering how you identify that individual? That seems like a kind of nebulous criteria. What do you think that would solve?

Mr. Rocky Gordon: I think that was an attempt to get at just the very thing I described, which is a web site out of state that this is all we do. It is not a practitioner who has a regular practice whose sees patients regularly. It is an attempt to get at that. Now, maybe there is a better way to do that, but that's kind of what we came up with on the House side.

Sen. Dotzenrod: This is really a side issue to the bill. But, the bill in front of us says service animal or assistance animal. It doesn't say dog or cat. I am most curious how far out do people get with this? Can they claim that they need a Burmese python, to help them get through the day? Can you make this claim outside of what we traditionally think, or am I just, I assume you're talking dogs and cats but maybe it's more than that?

Mr. Rocky Gordon: It is more than that. Miniature Horses are sometimes considered a service animal. By the way this encompasses, housing is our business, but it's a bigger issue than that. Airlines deal with it all the time.

Sen. D. Larson: Well I know that this might seem like a broken record, but my husband has a cat allergy. Getting onto an airplane one time, we were on our way and there were a lot of people getting on the plane with their cats, because they were going to a cat show. The airlines have a policy that says you can only have 3 animals on a plane at one time. So, can an apartment owner say, that you can only have a maximum number of these exceptions in this same apartment complex?

Mr. Rocky Gordon: My understanding would be that you can't limit the number in a building. It's based on the need of the individual resident. However, you probably can have a companion animal plus a companion for your companion animal. So how far does it go? That answer that've gotten, is there is a number, but again nobody tells us what it is in black and white. We'll tell you if you get it wrong. I've heard that 2 animals are probably not

unreasonable, but you get out more than that, within one apartment unit, that probably isn't reasonable. That's the answer that we've got.

(30:17- 32:44) Kelly Gorz, Fair Housing Specialist at High Plains Fair Housing Center in Grand Forks, ND. Written testimony #2. Recommend a do pass as it is currently written.

Chairman Burckhard: Can you expound a little bit on why you think this bill is not necessary?

Ms. Kelly Gorz: There are protections already in Century Code against fraudulent claims of disability. That is what this would fall under. Somebody is getting a letter off line that could be fraudulent and take it through the process we already have in place here in the state, that could be a fraudulent disability claim. Someone forging a doctor's note is a fraudulent disability claim which we are against and it's not covered under the Federal Fair Housing Act under protection.

Chairman Burckhard: So just enforce the law as we already have.

Ms. Kelly Gorz: We also understand on the apartment owner's side and property management side that they are seeing abuses of this. As its worded now we would be okay with that passing.

Sen. Anderson: They suggested a couple of amendments here. One of them would be on lines 5, 8 Section 2 to include a service animal or an assistance animal. Do you have any objection to that?

Ms. Kelly Gorz: I don't. Under the Fair Housing Act, it is all the same. It doesn't matter if it's an emotional support animal, or service animal.

Sen. Anderson: Apparently you don't object to somebody who makes a fraudulent claim.

Sen. J. Lee: Can you just say a little bit more about what the Federal objection is to having it be as Sen. Anderson said earlier, a medical professional license by the state?

Ms. Kelly Gorz: North Dakota currently has what's called the Substantial Equivalency. What those basically are state laws parallel what the federal laws are so that they allow and give money to the Department of Labor to deal with any kind of housing discrimination claim within the state which is great for everybody. It's great for us and it's great for the people we advocate for and it's great for property management owners because everything is done here through the Department of Labor and they are a neutral party. They are very good at coming in and investigating and they decide if they feel like this is a problem. They can make phone calls and find out if this is a real doctor or not and can do all that. It's good for everybody in our state. If we don't have that documentation it goes to the regional HUD office.

Sen. J. Lee: I didn't really get the answer to the question though? What is the objection by the feds of requiring so many licenses in the state of North Dakota?

Ms. Kelly Gorz: Under the Federal Fair Housing Act, it doesn't have to be a medical, it suggests a medical professional, but it has to be somebody who is familiar enough with the

disability to say that they need this. This could be a Mom. It is important to note, that if you have a visual disability, you don't need a doctor's note. You are required to grant that request. if somebody has a wheelchair and it's obvious that they need a service animal to pick things up that drop, they don't even need the doctor's request.

Sen. D. Larson: So you said that there is somebody that, or you mean a Mother could say my child needs this service animal because that's what the Mother thinks?

Ms. Kelly Gorz: At any time, the apartment manager complex can signal we are not going to grant it and you can take it to the Department of Labor and they have 180 days to conciliate the process or any time you feel there is fraud, you can say no we are not going to do it, and if you really feel that strongly that the Mom is just saying this because this child wants a pet or dog, but it not protected. Just because your sad and want a dog, that's not protected. You have to be able to show a disability and at that point they can ask for more specifics about the disability.

Sen. D. Larson: My original question was about when you talking about sending it to the Fair Housing, can landlords just routinely anytime they get one of those requests send it through to have it verified?

Ms. Kelly Gorz: They would just reject it is what would happen and then the persons could file a complaint if they feel that they have been discriminated against.

Sen. D. Larson: It would come down to a dispute. There is no verification other than if there is a dispute.

Ms. Kelly Gorz: Under the Federal Fair Housing Act, the only thing that you can ask is does the person have a disability, and does the requested accommodation in this case, the animal, ameliorate the effects of that disability. Also I would just like to say, I know I am here in full support of the bill as it is worded now. We do work with advocates and we do have people come in and we are seeing a lot of property managers handle this really well, but we are seeing abuses of the forms. We're seeing long forms, forms that ask doctors to be responsible if the pet does any damage. That's why they are not going to be able to get a signature.

(39.20-48:48) Michelle Kommer, Commissioner of Labor, presented neutral testimony on HB 1272. Written testimony #3, pages 1-6.

Sen. H. Anderson: With your office, it would appear that should the landlord think that somebody created a fraudulent documentation that they could contact your office and then your office would be the arbitrator of that. That would be our perception but apparently that is not what occurs.

Ms. Michelle Kommer: You are correct. Our office is not the arbitrator in those instances. We investigate claims of housing discrimination. Those may arise as a result of the topic that we are discussing today, but we would not be the party to mediate as to whether documentation is false or accurate.

Sen. Anderson: So that appears to me then that we do the bill because you're not doing that work now. Now, if somebody would like Mr. Gordon who says to somebody you can't stay here because I think your document is fraudulent. Okay. Now it would seem from previous testimony, that they would be a simple thing, but tell us what happens then when you investigate the claim and he is determined to be in violation and then what happens? What is the penalty for them and so forth?

Ms. Michelle Kommer: In that example that you gave, where a landlord doesn't rent to them because they believed the documentation to be false or fraudulent. I would have to make a little bit of a leap that being that the potential lessor or lessor, files a claim with our department, saying that I have been discriminated against as a person with a disability in the act of getting housing or being housed. If that is the case, and they file a claim with our department, whether it's because someone refused them housing because they said the documentation was fraudulent or whether it's because the claimant says they refused me housing because I am a member of a protected class, the process in our department is exactly the same. Which is that we would investigate that claim on its merits and determine if we are able to conclude that discrimination did indeed occur.

Sen. Anderson: Then what's the penalty? What happens to Rocky after that as far as the landlord?

Ms. Michelle Kommer: Well, if we were able to conclude that this discrimination did indeed occur, that the Landlord Association discriminated against this person because they have a disability, we would issue a finding as probably cause, that discrimination did indeed occur, and there are no financial penalties if they are disputed with that per our statutes.

Sen. Anderson: I am wondering what the purpose is then, if there are no penalties, no consequences, whatever, Rocky just says okay I am not renting to any of those people then. They all make complaints, what's the problem, or do they have to sue him in civil court then to gain some remediation or how does that work?

Ms. Michelle Kommer: I understand where you're going with your question now. Similar to employment discrimination, now housing discrimination, the answer to your question is that we could take a couple of different courses. Mediate, or conciliate our results. If there has been a finding that discrimination did occur, what is the result that we seek? Is it housing, is it monetary settlement, or some conclusion like that, just like in employment discrimination. A person might claim you know lost wages or loss opportunity. The process is very similar. In all cases our statutes does not say that there is a specific monetary penalty but that doesn't mean that there may not be a monetary settlement as a result of the situation like that. To continue on with your example, if Mr. Gordon said I am not going to rent my apartment to any disabled persons that could result in a lawsuit and again to insert fact, you might have a representative from High Plains Fair Housing Group take on representation of a class of people in a law suit which could result insignificant financial settlement. All hypothetical of course.

Sen. D. Larson: When you talk about a protective class and I don't dispute as I know that service animals really do make a difference for many people. But when you talk about protected class, does that mean that nobody else then is protected? Do you know what I am

saying? If somebody especially in hearing about a Mom who says my kid gets so nervous all the time, and when I let him have a cat, they're fine, so that's a disability. Just because the Mom says so, then they are protected, but where then is the protection for the neighbor with an allergy. They then have no protection because they are not listed as a protected class, is that correct?

Ms. Michelle Kommers: I want to first address something that is really important. A person is a member of a protected class as listed by North Dakota statute. So having a disability makes one a member of a protected class in ND, race, gender, sex, those are the protected classes, not exclusive was of protected in ND, so the discussion that has been heard today about a Mother saying her child needs a cat, does not make that child a member of a protected class. It still needs to be established that the child has a disability that requires the service animal or support- animal. But to answer the second part of your question. That is a struggle that we have in housing, in employment. Often times one- person accommodation and presuming it's legitimate, often times is a nuisance or annoyance to another, and as Mr. Petron testified too earlier we have to balance those things, whether it's in the workplace or in a housing setting. It can be challenging. My technical expert is sitting here and she has reminded me that the state law does provide monetary penalties for multiple violations. So to answer Sen. Anderson's line of questioning there.

Chairman Burckhard closed the hearing on HB 1272.

2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Red River Room, State Capitol

HB 1272

3/23/2017

29588

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

MJ. Wack

Explanation or reason for introduction of bill/resolution:

Relating to disability documentation for service or assistance animals in a rental dwelling, and to provide a penalty

Minutes:

Additional written testimony from Ms. Michelle Kommer #1.

Chairman Burckhard asked the committee to discuss HB 1272.

Sen. Kannianen: You know she says she believes this is with the intent of HB 1272 believes it possible to achieve that purpose without compromising the departments partnership with HUD and of course corresponding funding. (Sen. Kannianen is referring to Ms. Michelle Kommers, Department of Labor handout), Then there is an attached letter that I haven't really read through yet.

Sen. Dotzenrod: Some of the agencies seem like they have good bill writers on their staff and then they really do a lot of it. But I don't know in her department if she's got that. We would have to ask someone up in the Legislative Council but.

Sen. J. Lee: If we made a request to her to do that, that is a good idea. She might be willing to prepare an amendment that would accommodate that and not be in violation of HUD requirements. She knows more than any of the rest of us about HUD.

Chairman Burckhard: I think we should do that. I will be in touch with her. Discussion was closed until further time.

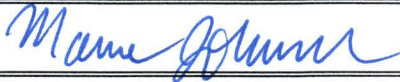
2017 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1272
3/24/2017
Job Number 29683

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to reasonable accommodations for service animals in rental dwelling units; relating to disability documentation for service or assistance animals in a rental dwelling; and to provide a penalty.

Minutes:

2 Attachments

Chairman Burckhard brought the meeting on HB 1272. All members were present.

Representative K. Koppelman: referenced attachment #1, **please see attachment #1.** Suggested amendments; page 1, line 14. (1:45-4:30) general confusion

Rep. Koppelman: "Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily to provide certification for service or assistance animals" This 'in this state' simply clarifies that their operation in this state is not only for that reason. That would get at the very problem we identified, people from other states doing this online, fill out an online survey or questionnaire, and you are qualified. It would clarify that if you are doing it in this state it can't be the only thing you are doing. The other piece of the amendment deals with page 2, line 6, where it says one month's rent. The original bill has better language which says not to exceed \$1,000. Inserting one month's rent, it was probably to say if your monthly rent is \$800, maybe your fine shouldn't be \$1000; however, having been a landlord, and having talked to many of them, what happens even when you have a security deposit equal to one month's rent, that leads to confusion. My suggestion is to take that one month's rent out.

Senator Lee: I think that the wording used in the Medical Marijuana bill, about how someone gets the registry identification card, the language says that it has to be a medical professional with whom you have an ongoing relationship for treatment.

Rep. Koppelman: It's a good idea however, let me caution you, the language we originally we had in the bill said a medical professional licensed in this state. That's part of what Housing and Urban Development objected to, they felt it was too narrow. They also brought up in border areas, you might cross borders for medical care. They came up with this language. The federal law just says qualified professional.

Michelle Kommer, Labor Commissioner: I provided a chronology of this bill, both to you and to Senator Hoeven's office. As Rep. Koppelman mentioned at last week's hearing he had reached out to them, and they had contacted us. This is to share the background. The first change the Rep Koppelman has proposed I don't see any objection to; it won't cause any problems with our HUD funding. The second part also raises no objections. I want to go back to my testimony from the other day. The proposal I made to just clean up that penalty section. If you adopt the amendment from Rep. Koppelman, it's my belief that our HUD funding will be fine. This suggestion is only to clarify the law, which I think is to the advantage of the tenant and the landlord; that each party knows when this becomes an infraction. Those were the recommendations I made in testimony. I think it's possible to integrate these suggestions, mine from my testimony on the 16th, attachment 8, page 2; changes to subsection 2, page 2.

Chairman Burckhard: It says an individual is guilty of an infraction if the individual in an attempt to obtain a reasonable housing accommodation, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. The lessor may evict a lease, and the lessor is entitled to a damage fee of one month's rent, not to exceed \$1000. So do we want to remove the one month's rent?

Senator Anderson: I would suggest that we say a fee not to exceed \$1000, and just remove that reference to one month's rent.

Michelle Kommer: If I might add, on page 3 is the amendment that I'm proposing, which you can integrate Rep. Koppelman's amendment, and Sen. Anderson's comment into.

Senator Anderson: There is some additional language, when you look at alternative b on page 3, it says following conviction. Does that mean you have to go to court and get them convicted of fraud before you can evict them?

Michelle Kommer: That is what this would accomplish.

Senator Lee: Why would I want to do that as a landlord?

Chairman Burckhard: That would delay the process.

Senator Larson: Not only that it costs a lot more money.

Chairman Burckhard: Any problems with us throwing that out?

Michelle Kommer: No, not with our HUD funding. The reason for the suggestion is the ambiguity as to who is the arbitrator of whether the documentation is false or not. I agree with the comments of the committee, that does complicate the process, but without that language it leaves open the question of who is determining if that certification is fraudulent or not.

Senator Larson: But wouldn't it be if the landlord thinks that the tenant has been fraudulent, the tenant would have every opportunity to file for civil action. If they say I have these rights and so if there's a landlord/lessee dispute, rather than the lessee having to be convicted of

a crime, I think I would rather, if it needs to go to court, be settled in a civil court rather than require that the landlord has to take their renter all the way to being convicted of a crime.

Michelle Kommer: I agree with your comment, a couple complications though: the statute as it's written today is creating guilt of an infraction, it's what we've chosen to make part of this bill. So there's already a criminal element to it. I appreciate your comment about the tenant being able to, if they feel that they've been wrongly accused of providing fraudulent documentation, you are absolutely right, at that point they can make a civil action. That is one option, I point out the dissonance, we're creating a crime through this amendment, it is an infraction, and yet we've left open to some extent where the determination is.

Senator Lee: Having been a landlady, I think that everybody who is appointed to any position in HUD or Fair Housing ought to have been a landlord or landlady before they decide how they're going to ruin the lives of everybody who is trying to provide rental housing. Gave a housing example (18:15-19:40).

Michelle Kommer: I have a suggestion. The word conviction could be swapped out with the determination, it's still open as to who is making the determination, but it at least clarifies for both the tenant and the landlord that after some determination that this is fraudulent, this is what happens. It could be by the landlord, if he or she were comfortable with making that determination.

Senator Lee: When it says conviction, that would suggest a court process.

Senator Anderson: If we're willing to take the time, I think asking Senator Lee to look up that language we used, where they would actually have to see the person before they made this determination, we could use similar language to what we used with the telemedicine. So you can't do an internet questionnaire, you can't do a telephone call. That's the point here, to say in this state, I think that's going to be very difficult to prosecute if we set some limits on how that person gets to that individual who's giving them the certification, then I think it could be more reasonable. We could use industry standard healthcare language; I think that would be appropriate.

Senator Lee: Can we say they have to be a competent medical professional, so mom can't say they need an assistance animal?

Michelle Kommer: That is the challenge, the law is very broad, it allows a person who is familiar with the tenant's condition to certify their need for a service animal. The challenge that we have is the state law can't be more restrictive than federal law. Initially as the bill was presented we were asking the medical provider to be certified in the state of North Dakota. Which is significantly more restrictive than federal law; it's a very clear contrast with federal law. The law today says may be a medical provider, if that 'may' was a 'must', our current law would be in violation with federal law. We have an agreement because we use the word 'may'. But if we make this more restrictive, we very much run afoul of substantial equivalency between state and federal law. I empathize and agree with the challenge before the committee today, but I urge you not to address that language beyond what you see here today.

Senator Dotzenrod: Could we put in our stature that this family member or person who is vouching that this animal is needed, that they would be required to produce some evidence to demonstrate that?

Michelle Kommer: We can and do. Landlords have a right to request information if it's done in a careful way. My recommendation would be to leave that part of the statute alone, because the way that it is read, most people would understand it to mean that we request certification from a medical provider. Most people, this is why the statutory language rides right on what is permissible, if we expand that language, we would open up those certifications further, which is consistent with federal law, by leaving it as it is today, I think that's the most narrow interpretation that's permissible.

Senator Lee: There was an addition recommended when we talked about this the first time of adding or assistance animal; that is still an appropriate addition?

Michelle Kommer: Yes, that would be fine.

Senator Lee: And we can delete of one month's rent, so we're not creating confusion?

Michelle Kommer: Correct.

Senator Lee: I move that we amend 1272 on page 2, section 2; add to line 5 and line 8 and assistance animal and on line 6 delete the phrase of one month's rent.

Senator Anderson: Are we including Rep Koppelman's language?

Senator Lee: We can't do that. She said we couldn't

Chairman Burckhard: She said that wouldn't affect the HUD funding.

Senator Anderson: On line 6 page 2, we're going to change it to damage fee not to exceed \$1000.

Senator Larson: I'll Second. A clarification question, where was the in the state placed?

Chairman Burckhard: It's the way it was on the amendment.

Senator Dotzenrod: I had looked at it and thought it belonged after professional but there's a big difference if you put it there, I didn't realize you can't restrict it to recommendations or qualifying for this by people who are only from North Dakota; which that would do if you put it after professional. It would be much more difficult.

Senator Lee: The other thing Ms. Kommer talked about was adding the phrase following conviction which we discussed would be better saying following determination.

Committee discussion about amendment details (30:20-32:20)

Both motions were withdrawn.

Committee recessed and returned to this bill later.

Chairman Burckhard: We wanted to make sure we had the words correct, so that both the Labor Commissioner and Rep. Koppelman had spoken to us about. Read proposed amendment, **please see attachment #2** (33:10-35:35:10) I think that's what we were looking for.

Senator Lee: I move the amendments.

Senator Larson: Second.

A roll call vote was taken.

Motion passes 6-0-0.

Senator Larson: What's the purpose of introducing this bill? Why are we changing it, is there something broken?

Senator Lee: Yes. People are abusing the system, saying they are twitchy if they can't keep their pet with them.

Senator Larson: And this takes care of that?

Senator Lee: As much as the feds are going to let us.

Senator Dotzenrod: There are many apartments that have a no pet policy; people are finding a way to use the system to go around.

Chairman Burckhard: There's a lot of abuse.

Senator Larson: I move Do Pass as Amended.

Senator Dotzenrod: Second.

A roll call vote was taken.

Motion passes 6-0-0.

Senator Anderson will carry.

March 24, 2017

C3
3/24-2017
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1272

Page 1, line 14, replace "primarily" with "in this state solely"

Page 2, after line 2 insert:

"1."

Page 2, line 4, remove "provides fraudulent disability documentation"

Page 2, line 5, replace "indicating a disability that requires the use of a service animal. A" with "knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim."

2. If the individual pleads guilty or is convicted of an offense under subsection 1, a

Page 2, line 6, remove "of one month's rent"

Page 2, line 8, after "animal" insert "or assistance animal"

Renumber accordingly

Date: 3.24.2017
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1272

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 17.0593.03001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Judy Lee Seconded By Sen. Diane Larson

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3.24.17
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1272

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 17.0593.03001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. D. Larson Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Randy Burckhard	✓		Senator Jim Dotzenrod	✓	
Vice-Chairman Howard Anderson	✓				
Senator Jordan Kannianen	✓				
Senator Diane Larson	✓				
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1272, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1272 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "primarily" with "in this state solely"

Page 2, after line 2 insert:

"1."

Page 2, line 4, remove "provides fraudulent disability documentation"

Page 2, line 5, replace "indicating a disability that requires the use of a service animal. A" with "knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim."

2. If the individual pleads guilty or is convicted of an offense under subsection 1, a"

Page 2, line 6, remove "of one month's rent"

Page 2, line 8, after "animal" insert "or assistance animal"

Renumber accordingly

2017 TESTIMONY

HB 1272

1-27-17

#1

1

January 27, 2017

Jeremy Petron
Lobbyist # 234
North Dakota Apartment Association

H B 1272

Re: HB 1272

Chairman Klemin and members of the Committee,

My name is Jeremy Petron. I am a lobbyist for the North Dakota Apartment Association.

We support House Bill 1272.

I have worked in apartment property management for 12 years. As Regional Manager for Goldmark Property Management, I oversee day-to-day operations for 1,300 apartment units in Bismarck, and 1,700 units in Grand Forks.

Housing providers must grant reasonable accommodations to persons with disabilities that impair one or more major life activities, to allow those individuals equal opportunity to use and enjoy their dwelling unit. The most common accommodation is allowing an assistance animal in a 'no pets' building. An example would be a 'seeing-eye' dog for a visually impaired person, who would typically have a service animal that is specifically trained to provide and perform a task for that disability. A more common example, though, is an 'emotional support' animal that provides comfort to persons with depression or anxiety. In most cases the accommodation requested is for a cat or a dog.

I have seen first-hand the benefits to residents who legitimately need and require emotional support assistance animals. These residents tend to be responsible animal owners by picking up after their animal, keeping the apartment and premises clean, and ensuring as much as possible to not disturb the quiet enjoyment rights of other residents in the building.

I have also seen first-hand the effects of irresponsible animal owners that don't pick up waste, where there are apparent urine stains on carpet, clawed and chewed woodwork, and barking at all hours of the day. A landlord does have the right to evict and recoup damages from individuals that allow these types of disruptions and damage, but the damage has already been done. It's typically this type of resident that didn't notify the landlord that they had an animal, and when confronted about it, the answer is "I have a doctor's note". The landlord does have the right to obtain verification from a medical professional regarding the need for the resident's accommodation, but surprisingly a lot of these verifications come in only after the landlord finds out there is an unauthorized animal in the apartment.

It has become surprisingly easy for a resident to obtain an accommodation verification for a dog or cat from a medical professional, and word gets out quickly amongst renters. On average, 8% of residents, or 1 in 12 units has an assistance animal. Most of these are for legitimate reasons, but there are also many fraudulently claiming to have a disability in an effort to obtain an animal in a no-pets building. Even an internet search on 'how to get an assistance animal' will give you options for paid services to obtain an accommodation verification. The Humane Society also has article resources on their website on how to obtain an assistance animal.

This bill will help deter fraudulent activity of individuals attempting to obtain a reasonable accommodation for an animal under false claims of a disability. There are 18 states with similar laws already in place, so this issue isn't just confined to our state. The issue also continues to exist despite the increase in pet-friendly building options across North Dakota in recent years.

We urge a do-pass on HB 1272.

**CHAPTER 14-02.4
HUMAN RIGHTS****14-02.4-01. State policy against discrimination.**

It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

14-02.4-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Aggrieved person" includes any person who claims to have been injured by a discriminatory practice.
3. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
4. "Department" means the division of human rights within the department of labor and human rights.
5. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
6. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
7. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the

HB 1272

1-27-17

#3

TESTIMONY ON HOUSE BILL NO. 1272

Chairman Klemin and members of the House Political Subdivisions Committee:

My name is Greg Thompson, and I am providing this testimony on behalf of the North Dakota Apartment Association, as a registered lobbyist for that Association. House Bill No. 1272 was drafted in an effort to deter individuals who are not disabled from feigning disability so that they can obtain a service animal. This is done by the individual either because the rental property will not accept pets, or to avoid a pet fee if the building is pet friendly.

Under the state and federal Fair Housing laws, a housing provider is required to grant a reasonable accommodation for an individual who is disabled if the accommodation is necessary to allow that individual an equal opportunity to use and enjoy the dwelling unit. One of the most common forms of reasonable accommodation is a renter's request for a service animal because of a disability of the renter. Under the Fair Housing laws, a housing provider is entitled to obtain verification from a medical professional that the renter has a disability and that there is a need for the accommodation because of that disability. Although there are many individuals who legitimately need an accommodation because of their disability, there are also numerous individuals who are skirting the rules under the Fair Housing laws in order to obtain a service animal in their apartment unit.

When these individuals who are not disabled are unsuccessful in obtaining medical verification of their disability or the need for an accommodation from a local medical provider, these individuals have been turning to the Internet to obtain that verification. There are numerous Internet sites advertising for disability assessments if the individual will pay a fee. Upon paying that fee, a simple questionnaire is completed over the Internet by the individual seeking the assessment and typically, a social worker in California, Oregon or Washington will then submit a letter in support of the individual's need for the assistance animal because of the disability. Naturally, the social worker or other person that signed the letter never sees the individual or treats the person for the disability, but will gladly render the assessment report in exchange for the fee.

This abuse of the system must stop. It is not only abusive to the housing provider, but unfair as well to those who are legitimately disabled and need a service animal.

This bill makes it a Class B Misdemeanor for any individual fraudulently claiming a disability and further requires that the medical provider issuing the report be licensed in the state of North Dakota. Finally, the legislation allows a housing provider to evict in this circumstance and to request a penalty for the abuse of the system.

Hopefully, this legislation will deter individuals who are not disabled from abusing the system. The North Dakota Apartment Association urges a do-pass for this amendment to Section 47-16-07.5.

1-27-17

HB 1272

#4

Max Blosser

Testimony for HB 1272

Mr. / Madam Chairman (woman), members of the committee, my name is Max Blosser and I am here as a private citizen. I am a student in Grand Forks at the University of North Dakota and an outreach coordinator at North Dakota's only fair housing non-profit, High Plains Fair Housing Center. I am here today to voice my concerns about this bill as it stands in its current form. I speak not only as a person who, multiple times a week, converses with people who are going through the reasonable accommodation process with their property managers, but also as someone who went through the process myself. After my girlfriend of six years and I got our first apartment together, her clinically diagnosed anxiety issues went through the roof. As someone who doesn't suffer from mental illness, I'll never understand her anxiety in full – however, I know it's serious and anything that could help was welcomed. After speaking with her doctor in our hometown located in the suburbs of Minneapolis, a therapeutic animal was mentioned form of treatment. When she decided to move forward with this form of treatment, our landlord denied the request. At this point, my girlfriend's anxiety was at a crisis. We had identified a non-allergenic dog (we both have allergies) that was available but it needed to be purchased quickly before it was no longer available. To alleviate her symptoms we needed to break our lease and move across town so that my girlfriend's anxiety could be managed.

In the new apartment, it took multiple conversations to explain that a pet fee cannot be applied to us, and that there are differences between service and support animals. To keep it short, it was one of the most stressful weeks of my life. Plus, I even had two midterms that week as well. It was awful, but worth it.

The language in this bill suggests, however, that my girlfriend's note from her doctor in Minnesota wouldn't work in the future. If it were her counselor, therapist, social service provider, or case manager, the language suggests these notes wouldn't work either.

In each of these instances, she would be complying with the Federal Fair Housing Act. But this bill would end the substantial equivalence the state currently has with the Fair Housing Act, and that means she would need to go through HUD, not the NDDOLHR to get her accommodation.

As a recent bill proposed in the ND Legislature explains, there are a lot of MN and other out-of-state students who attend ND colleges and universities. At UND, our Aerospace program is one of the best in the nation, and draws students from around the world. This bill would disproportionately affect out of state students who contribute so much to ND, and particularly to local economies. The stress of a reasonable accommodation request can be debilitating in its own right. This week I received a call from a veteran who served this nation for 8 years, and has combat related PTSD. My coworker and I were on the phone trying to help him with a reasonable accommodation for hours, and much of that time was spent consoling him while he held his cat's toy and wept. He explained how much his cat meant for him and his disability, and the idea of making the process even more difficult is only going to make things worse for people with disabilities.

However, the intent of the bill is clear and agreeable. All of the hard work we put in at High Plains Fair Housing Center is delegitimized when a disability is faked and a reasonable accommodation is granted when it shouldn't have been. While this issue may not be a persistent problem for most housing providers in North Dakota, its intent make sense.

But, the way the bill is written, it will have countless negative effects on hundreds of North Dakota residents each year. Making an already stressful situation even more stressful will hurt residents of this state much more than it will help housing providers who, uncommonly, face the issue of fake disability reasonable accommodation requests.

So I ask you to please, amend the bill so that its negative effects on students and out of state residents are remedied and if this can't happen, I ask you to scrap the bill altogether, as its negative effects greatly outweigh the benefits.

Thank you very much for having me.

1-27-17

#5

HB 1272

65th Legislative Assembly, Political Subdivisions Committee

Public Hearing on House Bill 1272

January 26, 2017

Good Morning, my name is Kelly Gorz. I am a Fair Housing Specialist at High Plains Fair Housing Center in Grand Forks. I want to thank Representatives B. Koppelman, R.C. Becker, Karls, K. Koppelman, Ruby and Senator O. Larsen for the opportunity to speak today.

We come today to speak to you about the wording of House Bill 1272.

High Plains Fair Housing Center is a private, non-profit fair housing organization that works to eliminate housing discrimination and to ensure equal housing opportunity for all. We advocate for those who have experienced discrimination in housing based on their status in a protective class and we provide education of fair housing rights and responsibility throughout the entire state. Consistent with nationwide statistics, the number one instance of housing discrimination in North Dakota is of persons with disabilities. About 25% of disability cases that we advocate for are combat veterans who have PTSD and use assistance or companion animals to alleviate their symptoms.

First, we understand that there are abuses of reasonable accommodations and that some people misrepresent that they have a disability in order to have their pets in pet free buildings. Fraudulent claims only make our job more difficult.

Our biggest concern is the restrictive wording in the bill which states that verification of a disability "MUST originate from a medical professional licensed or certified in this state." In order to receive a reasonable accommodation of having a service animal in a rental unit, a person, under federal law, must have a disability and be able to provide documentation that there is a nexus between the reasonable accommodation and the disability.

The two agencies that are tasked with enforcing the Federal Fair Housing Act and guiding the courts in interpreting the Fair Housing Act are the Department of Justice and the Department of Housing and Urban Development. These two agencies released the Joint Statement on Reasonable Accommodations under the Fair Housing Act in May of 2004. Page 13 of the statement says that,

"Depending on the individual's circumstances, information verifying that the person meets the Act's definition of the disability can usually be provided by the individual himself or herself (for example proof that an individual under 65 years of age receives SSI or Social Security Disability Insurance). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position

to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry."

This joint statement recognizes that health care professionals other than primary care physicians may be in a position to speak to a person with a disability's need for a reasonable accommodation.

Moreover, it is not unusual for a patient to be treated outside of the state they reside in. For example, a person living in a border city with another state such as Minnesota, South Dakota, or Montana may see a medical professional across state lines. Many out of state students do not receive care for their disability in North Dakota. It also excludes those who are treated for their disability at specialty centers out of state like Mayo Clinic or Cancer Centers of America. This Bill, if passed, could also exclude members of our armed forces that receive care on any of the military bases in North Dakota and any veteran who is treated at a VA hospital as the federal government states that military medical professionals can hold a license in any state to practice on a base or VA hospital.

Most importantly, North Dakota has substantial equivalence with the Federal Fair Housing Act. Because of this substantial equivalence, the North Dakota Department of Labor and Human Rights receives federal funds to investigate, determine cause and conciliates all fair housing cases in North Dakota. In states that do not have substantial equivalence, all fair housing claims go directly to HUD and HUD investigates, determines cause and conciliates the fair housing cases. If North Dakota passes legislation that is more restrictive than the Federal Fair Housing Act, North Dakota can lose its substantial equivalence. If North Dakota loses substantial equivalence the North Dakota Department of Labor and Human Rights will lose the funding for enforcing of the fair housing cases and all the cases will be heard by HUD in Denver. I think it is in everyone's self-interest to have North Dakota fair housing cases heard in North Dakota.

Again, we are fully aware of and fully supportive of the need to prevent disability fraud in the rental markets in North Dakota. We urge you address the restrictive wording of the bill so verification of a disability would come from sources in line with the HUD guidance and we advise the state to seriously consider the implications of losing our substantial equivalence with federal fair housing laws.

Thank you for your time.

High Plains Fair Housing Center
1405 1st Ave North, Grand Forks, ND
701-792-2878

HB 1272 #6
1-27-17

Testimony in Opposition to House Bill 1272 (as written)
Presented to the House Political Subdivisions Committee
January 27, 2017
TJ Jerke, North Dakota State Director
The Humane Society of the United States

Chairman Klemin, and member of the Committee, on behalf of The Humane Society of the United States and our supporters in North Dakota, thank you for this opportunity to submit testimony **in opposition to HB 1272 as written.**

I would like to thank the sponsor of the bill for bringing this issue to light. We support efforts to prevent individuals from making fraudulent requests for reasonable accommodations of service and assistance animals. However, we believe that, as currently written, this bill will violate federal protections for the disabled, place an undue burden on individuals with legitimate needs for service and assistance animals, lead to unintended consequences to the state and create more confusion and work for property managers and owners.

The definitions conflict with federal law.

Any legislation on this topic should mirror the definitions used in the federal law to maintain consistency and reduce confusion. Federal guidelines promulgated under the Americans with Disabilities Act and the Fair Housing Act permit individuals living with a disability to, when medically appropriate, use a service animal in a place of public accommodation and use an assistance animal in most types of housing. Service animals are defined as animals that are individually trained to perform a specific task for their disabled owner. The most well-known example is a guide dog for the blind. Service animals are allowed in public accommodations because of the owner's need for the animal at all times. Assistance animals, on the other hand, can be a cat, dog or other type of companion animal, and do not need to be individually trained to perform a service or task for their disabled owners. The health benefits from the animal living in the home are what qualify the animal as an assistance animal. There is no official certification or registration for service or assistance animals. If an individual produces or the animal wears an official looking certification, it is not necessarily reliable proof that the individual has a disability as well as a related need for a service or assistance animal. Both property managers and individuals should expect the reasonable accommodation process to be an interactive experience, with the parties asking proper questions and requesting appropriate verification.

Service and assistance animals are working animals, not pets, and therefore pet rules, such as breed or size restrictions, do not apply to them. Instead, the individual must ask for a reasonable accommodation to be exempted from the pet rule. In general, property managers are required to grant the reasonable accommodation, but the access is not absolute. If the animal poses a direct threat to the health or safety of others – including animals – the property manager can revoke the accommodation and require the animal to leave the premises. Therapy animals are not considered service or assistance animals while “emotional support animals” are a type of assistance animal.

According to the 2010 U.S. Census, nearly 1 in 5 people (approximately 56.7 million) are living with a disability. Under the ADA's broad definition of disability and the large number of people afflicted, it is more likely that the request to accommodate a service or assistance animal is actually underutilized. We believe that the vast majority of requests to accommodate a service or assistance animal are valid and critical; and when there is a rare occurrence of fraud, these instances may be blown out of proportion.

Enforce existing mechanisms that protect property owners.

The rules concerning service and assistance animals can be complicated and are not commonly known. Most questionable cases that property owners encounter stem from innocent confusion of the rule at issue and not from fraudulent intent. A public outreach campaign that, for example, provides signs for property owners to post that outline the parameters of service and assistance animal rules or provides training for property managers on how the interactive process works, will go much further towards striking the balance between allowing accommodations for those living with disabilities while ensuring the health and safety for everyone on the property.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. I want to refer you to the Joint Statement by the Dept. of Justice and Housing and Urban Development. Page 7 highlights these existing guidelines:

1. "A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.
2. Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following: 1. Does the person seeking to use and live with the animal have a disability? 2. Does the person making the request have a disability-related need for an assistance animal? If the answer to both is, "no" they are not required to modify their pet policy and the request may be denied. (HUD, page 2-3)

The bill isn't detailed enough regarding, a "False Claim."

What would be considered a, "false claim" under this law? Would it have to be verbally delivered or written? What if I leave a voicemail? How will a property owner or manager know it's a false claim? Will they have access to a database of all medical professionals licensed or certified in North Dakota? Is there a standard property owners would have to meet to determine a, "False claim?" What process will a property owner follow if they believe a claim has been falsified? What kind of recourse does an individual have if they are falsely accused of bringing a false claim?

Under federal guidelines, The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities: children, parents, friends, spouses, patients, or other associates.

Medical Professional requirement conflicts with HUD and DOJ regulations.

The requirement on lines 18 – 20 creates an impermissibly narrow definition for the individual permitted to verify a disability under federal law. A licensed medical professional may risk any federal funding the state receives. Per the DOJ and HUD information verifying that the person meets the American with Disabilities Act definition of disability can be provided by a doctor or other medical professional, a peer support group, a non-medical service agency, a reliable third party or even the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual).

The consequences of violating the Americans with Disabilities Act or Fair Housing Act are severe – we would be jeopardizing federal housing funds.

I implore the committee to consider, and ask, whether all other options have been exhausted before enacting this legislation. Have tenants and landlords, residents and property managers, disability advocates and local animal welfare advocates across the state discussed this matter and afforded the opportunity to create their own local policies within the framework already established by the federal laws.

Thank you for this opportunity. We ask for a Do Not Pass Recommendation on HB1272.



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

1

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). Accord: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g., City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 729 (1995); *Project Life v. Glendening*, 139 F. Supp. 703, 710 (D. Md. 2001), *aff'd* 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



Testimony on HB1272
Prepared for the
Political Subdivisions Committee

January 27th, 2017

Good morning Chairman Klemin and members of the Political Subdivisions Committee, my name is Michelle Kommer, and I am the Commissioner of Labor. I appear before you today neutral as to the spirit and intent of HB1272, and to provide information as to how the bill, as written, would cause the Department of Labor and Human Rights (Department) to become non-compliant with its Cooperative Agreement (Agreement) with the U.S. Department of Housing and Urban Development, the consequences associated with non-compliance, and how the bill may be modified to eliminate that concern.

HUD Cooperative Agreement. The Department receives and investigates complaints alleging discriminatory housing practices under the authority of N.D.C.C. ch. 14-02.5, the Housing Discrimination Act. The U.S. Department of Housing and Urban Development (HUD) has deemed the North Dakota housing law "substantially equivalent" to the Fair Housing Act, meaning that it offers at least the same substantive rights, procedures, remedies, and judicial review provisions as the federal Fair Housing Act. The substantial equivalency status of the law allows the Department to enter into the Cooperative Agreements with HUD. HUD then provides funding to the Department for complaint processing, administrative costs, and training funds. In the past five years (2012-16), the Department has been awarded \$624,440 through these Agreements, for an average of \$125,000 per year.

HB1272 and its Impacts. HB 1272 creates a new section of chapter 47-16 of the North Dakota Century Code.¹ The language contained in HB 1272, as written, eliminates the "substantial equivalency" between state and federal law by creating requirements that are *overly restrictive* when compared to federal law.

¹ It is unclear whether this new section replaces **47-16-07.5 Disability documentation for service or assistance animal in rental dwelling** or creates a new and separate section. This testimony assumes that the proposed language amends this section, but if that is not the intent, then the conflict between this new section and existing section 47-16-07.5 should be resolved.

Specifically, HB1272 requires that the documentation provided to verify the need for accommodation "...must originate from a medical professional licensed or certified in this state."

These requirements restrict the ability of a person with a disability in excess of what is permitted by federal law:

- "...must originate..."
- "...from a medical professional..."
- "...licensed or certified in this state."

In contrast, federal law permits documentation from a variety of sources² (other than a medical professional), without geographic restriction, as long as the documentation provider is "in a position to know about the individual's disability"³.

Further, the definition of "disability" in HB1272 does not correspond with the definition of "disability" in NDCC § 14-02.5-01.

Other. It should be noted that the loss of substantial equivalency certification does not release the Department of its responsibility to continue to investigate housing discrimination claims under N.D.C.C. ch. 14-02.5. In other words, the HUD funding would go away, but the work would not. Further, respondents to a housing discrimination claim could expect to be investigated by both the Department and HUD, with no collaboration between the investigative parties, essentially doubling the administrative burden for both the complainant and respondent. Should HB1272 pass as written, the Department would lose its substantial equivalency status upon implementation. Because the Department's work does not also shift, it would be necessary to request an increase in general funding that corresponds with the Department's loss of HUD funds.

Conclusion. For these reasons, I respectfully request a modification to HB1272 to preserve the substantial equivalency status between state and federal fair housing laws.

Thank you and I'd be happy to answer any questions you may have.

² A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

³ Reasonable Accommodations Under the Fair Housing Act (May 17, 2004), U.S. Department of Housing and Urban Development/Department of Justice Joint Memorandum can be found at <https://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

HB 1272

EDUCATIONAL/NEUTRAL TESTIMONY
HOUSE BILL NO: 1272
JANUARY 27, 2017



#9

1-27-17

GREAT PLAINS ASSISTANCE DOGS FOUNDATION DBA
SERVICE DOGS FOR AMERICA
PO Box 513
JUD, ND 58454
JENNY M. BRODKORB, EXECUTIVE DIRECTOR
INFO@SERVICEDOGSFORAMERICA.ORG

Acknowledgements

With the growing number of persons fraudulently representing their *pets* as **service dogs**, a fraudulent representation law is definitely needed. I offer accolades to the committee for setting forth on this journey. This is not an easy bill to introduce nor is it simple to ensure all the definitions are clear, specific, and provide the protection the bill intends.

Our organization receives a minimum of four calls per week from organizations (retail, restaurant, bank, grocery, etc.) and persons asking for clarification about emotional support animals versus service dogs in public. Additionally, we receive approximately five calls per month from rental property owners/managers asking for clarification about the laws which apply to them about all classes of "working" animals.

North Dakota's current Century Code addressing service animals (Title 25, Chapter 13, Sections 02, 02.1 (a, b, c)) does cover service animals' accessibility rights, trainer rights, etc. It is greatly appreciated you are addressing a couple of the short comings in our current century code, as it does not cover housing rights nor does it cover fraudulent representation language.

There is a great (and growing) need for North Dakota to draft legislation regarding the fraudulent representation of a service dog. Many other states have already set the precedent: California, Colorado, Florida, Idaho, Kansas, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Texas, Utah, and Washington. Many more states have pending legislation on the topic. (Source: <https://www.animallaw.info/topic/table-state-assistance-animal-laws>)

Professional Impressions

Stated previously, a fraudulent representation law is needed; however the language in this bill is lacking in many ways. As proposed, House Bill No. 1272 lacks appropriate definitions and necessary language to protect **both** tenants with a disability and the landlords who own and/or manage rental properties. **This bill also lacks ANY language beneficial for individuals, business owners, employers, or anyone outside of the housing rental industry.** Additionally, the language with regard to providing documentation from a North Dakota licensed physician for a service dog would be almost impossible. Service Dogs are not DME (durable medical equipment) and are not awarded based on a physician's recommendation, request, or prescription.

Emotional Support Animals can (under certain circumstances) be granted housing exceptions under the Fair Housing Act in situations where a physician or mental health practitioner feels there would be a therapeutic benefit for a person to have an Emotional Support Animal. An Emotional Support Animal is nothing more than a pet with a letter of recommendation from a physician or mental health practitioner. This is generally *only* used when the person resides in a rental where there is a "no pet" policy. Without question, this can be an abuse of the "reasonable accommodation" language in the Fair Housing Act.

HUD issued a notice (FHEO-2013-01) on April 25, 2013 which addresses a couple of the concerns which may be of interest to the committee on this matter. There may be some language in this notice which is helpful in providing clarification within this bill. I have included this document in my packet, for your reference. Also worth noting: the landlord may be granted an exception to being required to permit an Emotional Support Animal if (a) his building has four or fewer units and the landlord resides in one of those units, or (b) the landlord is a private owner who does not own more than three single family houses, does not use real estate brokers or agents, and does not use discriminatory advertisements. The landowner should contact HUD or the Department of Justice for more details on this language. (Source: <https://www.justice.gov/crt/us-department-housing-and-urban-development>)

This bill, also, is absent of any language which supports housing of service dogs "in training" (North Dakota Century Code 25-13-02.1). Many services dogs "in training" are placed in foster/training homes so the canine can be exposed to life situations which simply cannot occur in a training facility. Providing language which supports housing a service dog would be critical to the success of all service dog trainers and/or organizations. Under ND Century Code 25-13-02.1, service dogs in training are provided the same access as a trained service dog. The language in this bill needs to be clear that it reflect these protections in housing, as well.

I hope you find the following definitions and resources helpful in your revision of House Bill 1272. I am happy to offer any education guidance possible on this matter. I am also available to answer any questions you have as it pertains to Service Dogs, Emotional Support Animals, Therapy Animal Teams and fraudulent representation of those classes of working animals.

Housing Protection Provided Within Existing Federal Law by Each Class

Service [Dog] Animal

Rights Protected under The American's with Disabilities Act and the Fair Housing Act; public access granted in all public areas

Emotional Support Animal

Rights Protected under the Fair housing Act in certain circumstances; no public access granted

Therapy Animal Teams

No rights, No protection provided, public access granted by invitation only

Working Animal Definitions

Service [Dog] Animal Defined, Sourced (Attachment Provided)

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act. (Source: www.ada.gov)

*There is an exception (albeit uncommon), which is a miniature horse which can only be used as a guide animal (for someone who is blind). This class of animal is required to have specific training.

Emotional Support (Comfort) Animal Defined, Sourced (Attachment Provided)

*While **Emotional Support Animals** or **Comfort Animals** are often used as part of a medical treatment plan as therapy animals, they **are not considered service animals under the ADA**. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities. (Source: <https://adata.org/publication/service-animals-booklet>)*

*Emotional Support (Comfort) Animal is not species specific. It can be a dog, cat, iguana, bird, rat, etc. This class does not require any type of training or obedience.

Therapy Animal [Team] Defined, Sourced (Attachment Provided)

...Some states have laws defining therapy animals; these animals are not limited to working with people with disabilities and therefore are not covered by federal laws protecting the use of service animals. Therapy animals [team] provide people with therapeutic contact, usually in a clinical setting, to improve their physical, social, emotional, and/or cognitive functioning. (Source: <https://adata.org/publication/service-animals-booklet>)

*Therapy animals, like those who participate in the Pet Partners Therapy Animal Program, provide affection and comfort to various members of the public, typically in facility settings such as hospitals, retirement homes, and schools. These pets have a special aptitude for interacting with members of the public and enjoy doing so. Therapy animal owners volunteer their time to visit with their animal in the community. **A therapy animal has no special rights of access, except in those facilities where they are welcomed.** They may not enter businesses with "no pets" policies or accompany their handler in the cabin of an airplane regardless of their therapy animal designation. (Source: <https://petpartners.org/learn/terminology/>)*

*Therapy Animal [Team] is not species specific. It can be a dog, cat, iguana, bird, rat, etc. The team must consist of an animal and a human who received necessary training to provide services.

Disability Defined, Sourced

*An individual with a **disability** is **defined** by the **ADA** as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. (Source: www.ada.gov)*



ADA

2010 Revised
Requirements

Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Overview

This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s revised regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How “Service Animal” Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from that State's attorney general's office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**For more information about the ADA,
please visit our website or call our toll-free number.**

ADA Website
www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)
24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

HB 1272 #11 1-27-17
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHA or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHA and Section 504. In situations where the ADA and the FHA/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHA/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHA, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

If the answer to question (1) **or** (2) is "no," then the FHAct and Section 504 do not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are "yes," the FHAct and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant's dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as 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. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, "an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat."¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct."¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider's responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

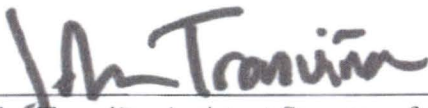
The definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity .

U.S. Department of Justice
Civil Rights Division
Disability Rights Section



A Guide to Disability Rights Laws

July 2009

TABLE OF CONTENTS

Americans with Disabilities Act

Telecommunications Act

Fair Housing Act

Air Carrier Access Act

Voting Accessibility for the Elderly and Handicapped Act

National Voter Registration Act

Civil Rights of Institutionalized Persons Act

Individuals with Disabilities Education Act

Rehabilitation Act

Architectural Barriers Act

General Sources of Disability Rights Information

Statute Citations

For persons with disabilities, this document is available in large print, Braille, audio tape, and computer disk.

Reproduction of this document is encouraged.

This guide provides an overview of Federal civil rights laws that ensure equal opportunity for people with disabilities. To find out more about how these laws may apply to you, contact the agencies and organizations listed below.

Americans with Disabilities Act (ADA)

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

ADA Title I: Employment

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment. It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated State or local fair employment practice agency. Individuals may file a lawsuit in

Federal court only after they receive a "right-to-sue" letter from the EEOC.

Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office. Field offices are located in 50 cities throughout the U.S. and are listed in most telephone directories under "U.S. Government." For the appropriate EEOC field office in your geographic area, contact:

(800) 669-4000 (voice)
(800) 669-6820 (TTY)

www.eeoc.gov

Publications and information on EEOC-enforced laws may be obtained by calling:

(800) 669-3362 (voice)
(800) 800-3302 (TTY)

For information on how to accommodate a specific individual with a disability, contact the Job Accommodation Network at:

(800) 526-7234 (voice)
(800) 781-9403 (TTY)

<http://askjan.org>

ADA Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Complaints of title II violations may be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department may bring a lawsuit where it has investigated a matter and has been unable to resolve violations. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)

(800) 514-0383 (TTY)

Title II may also be enforced through private lawsuits in Federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other Federal agency, or to receive a "right-to-sue" letter, before going to court.

ADA Title II: Public Transportation

The transportation provisions of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations. Questions and complaints about public transportation should be directed to:

Office of Civil Rights
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue, Room E54-427
Room 9102
Washington, D.C. 20590

www.fta.dot.gov/ada

(888) 446-4511 (voice/relay)

ADA Title III: Public Accommodations

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

Complaints of title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with the Department of Justice (or any Federal agency), or to receive a "right-to-sue" letter, before going to court. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)
(800) 514-0383 (TTY)

ADA Title IV: Telecommunications Relay Services

Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. TRS enables callers with hearing and speech disabilities who use TTYs (also known as TDDs), and callers who use voice telephones to communicate with each other through a third party communications assistant. The Federal Communications Commission (FCC) has set minimum standards for TRS services. Title IV also requires closed captioning of Federally funded public service announcements. For more information about TRS, contact the FCC at:

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

www.fcc.gov/cgb/dro

(888) 225-5322 (Voice)
(888) 835-5322 (TTY)

Telecommunications Act

Section 255 and Section 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, require manufacturers of telecommunications equipment and

providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable. These amendments ensure that people with disabilities will have access to a broad range of products and services such as telephones, cell phones, pagers, call-waiting, and operator services, that were often inaccessible to many users with disabilities. For more information, contact:

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

www.fcc.gov/cgb/dro

(888) 225-5322 (Voice)
(888) 835-5322 (TTY)

Fair Housing Act

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. Its coverage includes private housing, housing that receives Federal financial assistance, and State and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a "no pets" policy may be required to grant an exception to this rule and allow an individual who is blind to keep a guide dog in the residence. The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (The landlord is not required to pay for the changes.) The Act further requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development. For more information or to file a complaint, contact:

Office of Compliance and Disability Rights Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5242
Washington, D.C. 20410

www.hud.gov/offices/theo

(800) 669-9777 (voice)
(800) 927-9275 (TTY)

For questions about the accessibility provisions of the Fair Housing Act, contact Fair Housing FIRST at:

www.fairhousingfirst.org

(888) 341-7781 (voice/TTY)

For publications, you may call the Housing and Urban Development Customer Service Center at:

(800) 767-7468 (voice/relay)

Additionally, the Department of Justice can file cases involving a pattern or practice of discrimination. The Fair Housing Act may also be enforced through private lawsuits.

Air Carrier Access Act

The Air Carrier Access Act prohibits discrimination in air transportation by domestic and foreign air carriers against qualified individuals with physical or mental impairments. It applies only to air carriers that provide regularly scheduled services for hire to the public.

Requirements address a wide range of issues including boarding assistance and certain accessibility features in newly built aircraft and new or altered airport facilities. People may enforce rights under the Air Carrier Access Act by filing a complaint with the U.S. Department of Transportation, or by bringing a lawsuit in Federal court. For more information or to file a complaint, contact:

Aviation Consumer Protection Division, C-75
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

<http://airconsumer.ost.dot.gov>

(202) 366-2220 (voice)

(202) 366-0511 (TTY)

(800) 778-4838 (voice)

(800) 455-9880 (TTY)

Voting Accessibility for the Elderly and Handicapped Act

The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot on the day of the election. This law also requires states to make available registration and voting aids for disabled and elderly voters, including information by TTYs (also known as TDDs) or similar devices. For more information, contact:

U.S. Department of Justice

Civil Rights Division
950 Pennsylvania Avenue, N.W.
Voting Section - 1800 G
Washington, D.C. 20530

(800) 253-3931 (voice/TTY)

National Voter Registration Act

The National Voter Registration Act of 1993, also known as the "Motor Voter Act," makes it easier for all Americans to exercise their fundamental right to vote. One of the basic purposes of the Act is to increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of State-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, to assist them in completing the forms, and to transmit completed forms to the appropriate State official. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Voting Section - 1800 G
Washington, D.C. 20530

www.usdoj.gov/crt/voting

(800) 253-3931 (voice/TTY)

Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at State and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons.

The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are "egregious or flagrant," that they are subjecting residents to "grievous harm," and that they are part of a "pattern or practice" of resistance to residents' full enjoyment of constitutional or Federal rights, including title II of the ADA and section 504 of the Rehabilitation Act. For more information or to bring a matter to the Department of Justice's attention, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Special Litigation Section - PHB

Washington, D.C. 20530

www.usdoj.gov/crt/split

(877) 218-5228 (voice/TTY)

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) (formerly called P.L. 94-142 or the Education for all Handicapped Children Act of 1975) requires public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs.

IDEA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child. The specific special education and related services outlined in each IEP reflect the individualized needs of each student.

IDEA also mandates that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be at least reviewed annually. The team includes the child's teacher; the parents, subject to certain limited exceptions; the child, if determined appropriate; an agency representative who is qualified to provide or supervise the provision of special education; and other individuals at the parents' or agency's discretion.

If parents disagree with the proposed IEP, they can request a due process hearing and a review from the State educational agency if applicable in that state. They also can appeal the State agency's decision to State or Federal court. For more information, contact:

Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100

www.ed.gov/about/offices/list/osep

(202) 245-7468 (voice/TTY)

Rehabilitation Act

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.

Section 501

Section 501 requires affirmative action and nondiscrimination in employment by Federal agencies of the executive branch. To obtain more information or to file a complaint, employees should contact their agency's Equal Employment Opportunity Office.

Section 503

Section 503 requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contracts of more than \$10,000. For more information on section 503, contact:

Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room C-3325
Washington, D.C. 20210

www.dol.gov/ofccp/index.htm

(202) 693-0106 (voice/relay)

Section 504

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

Each Federal agency has its own set of section 504 regulations that apply to its own programs. Agencies that provide Federal financial assistance also have section 504 regulations covering entities that receive Federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations. Each agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to court.

For information on how to file 504 complaints with the appropriate agency, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)

(800) 514-0383 (TTY)

Section 508

Section 508 establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal government. Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

An accessible information technology system is one that can be operated in a variety of ways

and does not rely on a single sense or ability of the user. For example, a system that provides output only in visual format may not be accessible to people with visual impairments and a system that provides output only in audio format may not be accessible to people who are deaf or hard of hearing. Some individuals with disabilities may need accessibility-related software or peripheral devices in order to use systems that comply with Section 508. For more information on section 508, contact:

U.S. General Services Administration
Office of Government-wide Policy IT Accessibility & Workflow
Division (ITAW)
1800 F Street, N.W.
Room 2222 - MEC:ITAW
Washington, DC 20405-0001

www.gsa.gov/portal/content/105254

(202) 501-4906 (voice)

U.S. Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, DC 20004-1111

www.access-board.gov

800-872-2253 (voice)

800-993-2822 (TTY)

Architectural Barriers Act

The Architectural Barriers Act (ABA) requires that buildings and facilities that are designed, constructed, or altered with Federal funds, or leased by a Federal agency, comply with Federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities. Facilities of the U.S. Postal Service are covered by the ABA. For more information or to file a complaint, contact:

U.S. Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111

www.access-board.gov

(800) 872-2253 (voice)

(800) 993-2822 (TTY)

General Sources of Disability Rights Information

ADA Information Line
(800) 514-0301 (voice)
(800) 514-0383 (TTY)

www.ada.gov

Regional Disability and Business
Technical Assistance Centers
(800) 949-4232 (voice/TTY)

www.adata.org

Statute Citations

Air Carrier Access Act of 1986

49 U.S.C. § 41705

Implementing Regulation:
14 CFR Part 382

Americans with Disabilities Act of 1990

42 U.S.C. §§ 12101 et seq.

Implementing Regulations:
29 CFR Parts 1630, 1602 (Title I, EEOC)
28 CFR Part 35 (Title II, Department of Justice)
49 CFR Parts 27, 37, 38 (Title II, III, Department of Transportation)
28 CFR Part 36 (Title III, Department of Justice)
47 CFR §§ 64.601 et seq. (Title IV, FCC)

Architectural Barriers Act of 1968

42 U.S.C. §§ 4151 et seq.

Implementing Regulation:
41 CFR Subpart 101-19.6

Civil Rights of Institutionalized Persons Act

42 U.S.C. §§ 1997 et seq.

Fair Housing Amendments Act of 1988

42 U.S.C. §§ 3601 et seq.

Implementing Regulation:
24 CFR Parts 100 et seq.

Individuals with Disabilities Education Act

20 U.S.C. §§ 1400 et seq.

Implementing Regulation:
34 CFR Part 300

National Voter Registration Act of 1993

42 U.S.C. §§ 1973gg et seq.

Section 501 of the Rehabilitation Act of 1973, as amended

29 U.S.C. § 791

12

Implementing Regulation:
29 CFR § 1614.203

Section 503 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 793

Implementing Regulation:
41 CFR Part 60-741

Section 504 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 794

Over 20 Implementing Regulations for federally assisted programs, including:
34 CFR Part 104 (Department of Education)
45 CFR Part 84 (Department of Health and Human Services)
28 CFR §§ 42.501 et seq.

Over 95 Implementing Regulations for federally conducted programs, including:
28 CFR Part 39 (Department of Justice)

Section 508 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 794d

Telecommunications Act of 1996
47 U.S.C. §§ 255, 251(a)(2)

Voting Accessibility for the Elderly and Handicapped Act of 1984
42 U.S.C. §§ 1973ee et seq.

April 9, 2012

Service Animals and Emotional Support Animals



2014



Service Animals and Emotional Support Animals

Where are they allowed and under what conditions?

Jacquie Brennan

Vinh Nguyen (Ed.)

Southwest ADA Center

A program of ILRU at TIRR Memorial Hermann

For the most current and accessible version, please visit
<http://adainfo.us/serviceanimalbook>

Foreword

This manual is dedicated to the memory of Pax, a devoted guide dog, and to all the handler and dog teams working together across the nation. Guide dogs make it possible for their handlers to travel safely with independence, freedom and dignity.

Pax guided his handler faithfully for over ten years. Together they negotiated countless busy intersections and safely traveled the streets of many cities, large and small. His skillful guiding kept his handler from injury on more than one occasion. He accompanied his handler to business meetings, restaurants, theaters, and social functions where he conducted himself as would any highly trained guide dog. Pax was a seasoned traveler and was the first dog to fly in the cabin of a domestic aircraft to Great Britain, a country that had previously barred service animals without extended quarantine.

Pax was born in the kennels of The Seeing Eye in the beautiful Washington Valley of New Jersey in March, 2000. He lived with a puppy-raiser family for almost a year where he learned basic obedience and was exposed to the sights and sounds of community life—the same experiences he would soon face as a guide dog. He then went through four months of intensive training where he learned how to guide and ensure the safety of the person with whom he would be matched. In November 2001 he was matched with his handler and they worked as a team until Pax's retirement in January 2012, after a long and successful career. Pax retired with his handler's family, where he lived with two other dogs. His life was full of play, long naps, and recreational walks until his death in January 2014.

It is the sincere hope of Pax's handler that this guide will be useful in improving the understanding about service animals, their purpose and role, their extensive training, and the rights of their handlers to travel freely and to experience the same access to employment, public accommodations, transportation, and services that others take for granted.

I. Introduction

Individuals with disabilities may use service animals and emotional support animals for a variety of reasons. This guide provides an overview of how major Federal civil rights laws govern the rights of a person requiring a service animal. These laws, as well as instructions on how to file a complaint, are listed in the last section of this publication. Many states also have laws that provide a different definition of service animal. You should check your state's law and follow the law that offers the most protection for service animals. The document discusses service animals in a number of different settings as the rules and allowances related to access with service animals will vary according to the law applied and the setting.

II. Service Animal Defined by Title II and Title III of the ADA

A service animal means 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. Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability. It does not matter if a person has a note from a doctor that states that the person has a disability and needs to have the animal for emotional support. A doctor's letter does not turn an animal into a service animal.

Examples of animals that fit the ADA's definition of "service animal" because they have been specifically trained to perform a task for the person with a disability:

-
- Guide Dog or Seeing Eye[®] Dog¹ is a carefully trained dog that serves as a travel tool for persons who have severe visual impairments or are blind.
 - Hearing or Signal Dog is a dog that has been trained to alert a person who has a significant hearing loss or is deaf when a sound occurs, such as a knock on the door.
 - Psychiatric Service Dog is a dog that has been trained to perform tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and lessen their effects. Tasks performed by psychiatric service animals may include reminding the handler to take medicine; providing safety checks or room searches, or turning on lights for persons with Post Traumatic Stress Disorder; interrupting self-mutilation by persons with dissociative identity disorders; and keeping disoriented individuals from danger.
 - SSigDOG (sensory signal dogs or social signal dog) is a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).
 - Seizure Response Dog is a dog trained to assist a person with a seizure disorder. How the dog serves the person depends on the person's needs. The dog may stand guard over the person during a seizure or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance to sit down or move to a safe place.

Under the Title II and III of the ADA, service animals are limited to dogs. However, entities must make reasonable modifications in policies to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for individuals with disabilities

III. Other Support or Therapy

¹ <http://www.seeingeye.org>

Animals

While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities. Even though some states have laws defining therapy animals, these animals are not limited to working with people with disabilities and therefore are not covered by federal laws protecting the use of service animals. Therapy animals provide people with therapeutic contact, usually in a clinical setting, to improve their physical, social, emotional, and/or cognitive functioning.

IV. Handler's Responsibilities

- The handler is responsible for the care and supervision of his or her service animal. If a service animal behaves in an unacceptable way and the person with a disability does not control the animal, a business or other entity does not have to allow the animal onto its premises. Uncontrolled barking, jumping on other people, or running away from the handler are examples of unacceptable behavior for a service animal. A business has the right to deny access to a dog that disrupts their business. For example, a service dog that barks repeatedly and disrupts another patron's enjoyment of a movie could be asked to leave the theater. Businesses, public programs, and transportation providers may exclude a service animal when the animal's behavior poses a direct threat to the health or safety of others. If a service animal is growling at other shoppers at a grocery store, the handler may be asked to remove the animal.

-
- The ADA requires the animal to be under the control of the handler. This can occur using a harness, leash, or other tether. However, in cases where either the handler is unable to hold a tether because of a disability or its use would interfere with the service animal's safe, effective performance of work or tasks, the service animal must be under the handler's control by some other means, such as voice control.²
 - The animal must be housebroken.³
 - The ADA does not require covered entities to provide for the care or supervision of a service animal, including cleaning up after the animal.
 - The animal should be vaccinated in accordance with state and local laws.
 - An entity may also assess the type, size, and weight of a miniature horse in determining whether or not the horse will be allowed access to the facility.

V. Handler's Rights

a) Public Facilities and Accommodations

Title II and III of the ADA makes clear that service animals are allowed in public facilities and accommodations. A service animal must be allowed to accompany the handler to any place in the building or facility where members of the public, program participants, customers, or clients are allowed. Even if the business or a public program has a "no pets" policy, it may not deny entry to a person with a service animal. Service animals are not pets. So, although a "no pets" policy is perfectly legal, it does not allow a business to exclude service animals.

When a person with a service animal enters a public facility or place of public accommodation, the person cannot be asked about the nature or extent of his disability. Only two questions may be asked:

1. Is the animal required because of a disability?

² 28 C.F.R. 36.302(c)(4); 28 C.F.R. § 35.136(d).

³ 28 C.F.R. 36.302(c)(2); 28 C.F.R. § 35.136(b)(2).

2. What work or task has the animal been trained to perform?

These questions should not be asked, however, if the animal's service tasks are obvious. For example, the questions may not be asked if the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability.⁴

A public accommodation or facility is not allowed to ask for documentation or proof that the animal has been certified, trained, or licensed as a service animal. Local laws that prohibit specific breeds of dogs do not apply to service animals.⁵

A place of public accommodation or public entity may not ask an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees. Entities cannot require anything of people with service animals that they do not require of individuals in general, with or without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.⁶

b) Employment

Laws prohibit employment discrimination because of a disability. Employers are required to provide reasonable accommodation. Allowing an individual with a disability to have a service animal or an emotional support animal accompany them to work may be considered an accommodation. The Equal Employment Opportunity Commission (EEOC), which enforces the employment provisions of the ADA (Title I), does not have a specific regulation on service animals.⁷ In the case of a service animal or an emotional support animal, if the disability is not obvious and/or the reason the animal is needed is not clear, an employer may request documentation

⁴ 28 C.F.R. 36.302(c)(6).

⁵ See 28 C.F.R. Pt. 35, App. A; *Sak v. Aurelia, City of*, C 11-4111-MWB (N.D. Iowa Dec. 28, 2011)

⁶ 28 C.F.R. 36.302(c)(8).

⁷ 29 C.F.R. Pt. 1630 App. The EEOC, in the Interpretive Guidance accompanying the regulations, stated that guide dogs may be an accommodation..."For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee."

to establish the existence of a disability and how the animal helps the individual perform his or her job.

Documentation might include a detailed description of how the animal would help the employee in performing job tasks and how the animal is trained to behave in the workplace. A person seeking such an accommodation may suggest that the employer permit the animal to accompany them to work on a trial basis.

Both service and emotional support animals may be excluded from the workplace if they pose either an undue hardship or a direct threat in the workplace.

c) Housing

The Fair Housing Act (FHA) protects a person with a disability from discrimination in obtaining housing. Under this law, a landlord or homeowner's association must provide reasonable accommodation to people with disabilities so that they have an equal opportunity to enjoy and use a dwelling.⁸ Emotional support animals that do not qualify as service animals under the ADA may nevertheless qualify as reasonable accommodations under the FHA.⁹ In cases when a person with a disability uses a service animal or an emotional support animal, a reasonable accommodation may include waiving a no-pet rule or a pet deposit.¹⁰ This animal is not considered a pet.

A landlord or homeowner's association may not ask a housing applicant about the existence, nature, and extent of his or her disability. However, an individual with a disability who requests a reasonable accommodation may be asked to provide documentation so that the landlord or homeowners' association can properly review the accommodation request.¹¹ They can ask a person to certify, in writing, (1) that the tenant or a member of his or her

⁸ 42 U.S.C. § 3604(f)(3)(B).

⁹ *Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 3:09-cv-58 (D.N.D. Mar. 30, 2011): "... the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability."

¹⁰ See *Bronk v. Ineichen*, 54 F.3d 425, 428-429 (7th Cir. 1995); *HUD v. Purkett*, FH-FL 19372 (HUDALJ July 31, 1990) *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (D. Ore. 1998).

¹¹ *Hawn v. Shoreline Towers Phase 1 Condominium Association, Inc.*, 347 Fed. Appx. 464 (11th Cir. 2009).

family is a person with a disability; (2) the need for the animal to assist the person with that specific disability; and (3) that the animal actually assists the person with a disability.¹² It is important to keep in mind that the ADA may apply in the housing context as well, for example with student housing. Where the ADA applies, requiring documentation or certification would not be permitted with regard to an animal that qualifies as a "service animal."

d) Education

Service animals in public schools (K-12)¹³ – The ADA permits a student with a disability who uses a service animal to have the animal at school. In addition, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act allow a student to use an animal that does not meet the ADA definition of a service animal, if that student's Individual Education Plan (IEP) or Section 504 team decides the animal is necessary for the student to receive a free and appropriate education. Where the ADA applies, however, schools should be mindful that the use of a service animal is a right that is not dependent upon the decision of an IEP or Section 504 team.¹⁴

Emotional support animals, therapy animals, and companion animals are seldom allowed to accompany students in public schools. Indeed, the ADA does not contemplate the use of animals other than those meeting the definition of "service animal." Ultimately, the determination whether a student may utilize an animal other than a service animal should be made on a case-by-case basis by the IEP or Section 504 team.

Service animals in postsecondary education settings – Under the ADA, colleges and universities must allow people with disabilities to bring their service animals into all areas of the facility that are open to the public or to

¹² See "Pet Ownership for the Elderly and Persons with Disabilities", 73 *Federal Register* 208 (27 October 2008), pp. 63834-63838; United States. (2004). Reasonable Accommodations under the Fair Housing Act: Joint Statement of the Department of Housing and Urban Development and Department of Justice. Washington, D.C: U.S. Department of Housing and Urban Development and U.S. Department of Justice [Electronic Version]. Retrieved 03/06/2014 from http://www.justice.gov/crt/about/hce/jointstatement_ra.php.

¹³ Private schools that are not operated by religious entities are considered public accommodations. Please refer to Section V(a).

¹⁴ *Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947 (E.D. Cal. 1990).

students.

Colleges and universities may have a policy asking students who use service animals to contact the school's Disability Services Coordinator to register as a student with a disability. Higher education institutions may not require any documentation about the training or certification of a service animal. They may, however, require proof that a service animal has any vaccinations required by state or local laws that apply to all animals.

e) Transportation

A person traveling with a service animal cannot be denied access to transportation, even if there is a "no pets" policy. In addition, the person with a service animal cannot be forced to sit in a particular spot; no additional fees can be charged because the person uses a service animal; and the customer does not have to provide advance notice that s/he will be traveling with a service animal.

The laws apply to both public and private transportation providers and include subways, fixed route buses, Para transit, rail, light-rail, taxicabs, shuttles and limousine services.

f) Air Travel

The Air Carrier Access Act (ACAA) requires airlines to allow service animals and emotional support animals to accompany their handlers in the cabin of the aircraft.

Service animals

For evidence that an animal is a service animal, air carriers may ask to see identification cards, written documentation, presence of harnesses, or tags, or ask for verbal assurances from the individual with a disability using the animal. If airline personnel are uncertain that an animal is a service animal, they may ask one of the following:

1. What tasks or functions does your animal perform for you?
2. What has your animal been trained to do for you?

3. Would you describe how the animal performs this task for you?¹⁵

Emotional support and psychiatric service animals

Individuals who travel with emotional support animals or psychiatric service animals may need to provide specific documentation to establish that they have a disability and the reason the animal must travel with them.

Individuals who wish to travel with their emotional support or psychiatric animals should contact the airline ahead of time to find out what kind of documentation is required.

Example of documentation that may be requested by the airline: Current documentation (not more than one year old) on letterhead from a licensed mental health professional stating (1) that the passenger has a mental health-related disability listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV); (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment; (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care; and (4) the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued."¹⁶ This documentation may be required as a condition of permitting the animal to accompany the passenger in the cabin.

Other animals

According to the ACAA, airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals (for example, search and rescue dogs) provided that they comply with other applicable requirements (for example, the Animal Welfare Act).

Animals such as miniature horses, pigs, and monkeys may be considered service animals. A carrier must decide on a case-by-case basis according to factors such as the animal's size and weight; state and foreign country

¹⁵ "Guidance Concerning Service Animals in Air Transportation", 68 *Federal Register* 90 (9 May 2003), p. 24875.

¹⁶ 14 C.F.R. § 382.117(e).

restrictions; and whether or not the animal would pose a direct threat to the health or safety of others or cause a fundamental alteration in the cabin service.¹⁷ Individuals should contact the airlines ahead of travel to find out what is permitted.

Airlines are not required to transport unusual animals such as snakes, other reptiles, ferrets, rodents, and spiders. Foreign carriers are not required to transport animals other than dogs.¹⁸

VI. Reaction/Response of Others

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. If employees, fellow travelers, or customers are afraid of service animals, a solution may be to allow enough space for that person to avoid getting close to the service animal.

Most allergies to animals are caused by direct contact with the animal. A separate space might be adequate to avoid allergic reactions.

If a person is at risk of a significant allergic reaction to an animal, it is the responsibility of the business or government entity to find a way to accommodate both the individual using the service animal and the individual with the allergy.

VII. Service Animals in Training

a) Air Travel

The Air Carrier Access Act (ACAA) does not allow “service animals in training” in the cabin of the aircraft because “in training” status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary.

¹⁷ 14 C.F.R. § 382.117(f).

¹⁸ *Id.*

Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines and become familiar with their policies.

b) Employment

In the employment setting, employers may be obligated to permit employees to bring their "service animal in training" into the workplace as a reasonable accommodation, especially if the animal is being trained to assist the employee with work-related tasks. The untrained animal may be excluded, however, if it becomes a workplace disruption or causes an undue hardship in the workplace.

c) Public Facilities and Accommodations

Title II and III of the ADA does not cover "service animals in training" but several states have laws when they should be allowed access.

VIII. Laws & Enforcement

a) Public Facilities and Accommodations

Title II of the ADA covers state and local government facilities, activities, and programs. Title III of the ADA covers places of public accommodations. Section 504 of the Rehabilitation Act covers federal government facilities, activities, and programs. It also covers the entities that receive federal funding.

Title II and Title III Complaints – These can be filed through private lawsuits in federal court or directed to the U.S. Department of Justice.

U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Civil Rights Division
Disability Rights Section – NYA
Washington, DC 20530
<http://www.ada.gov>
800-514-0301 (v)
800-514-0383 (TTY)

Section 504 Complaints – These must be made to the specific federal agency that oversees the program or funding.

b) Employment

Title I of the ADA and Section 501 and Section 504 of the Rehabilitation Act prohibit discrimination in employment. The ADA covers private employers with 15 or more employees; Section 501 applies to federal agencies, and Section 504 applies to any program or entity receiving federal financial assistance.

ADA Complaints - A person must file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days of an alleged violation of the ADA. This deadline may be extended to 300 days if there is a state or local fair employment practices agency that also has jurisdiction over this matter. Complaints may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. This number is listed in most telephone directories under "U.S. Government." For more information:

<http://www.eeoc.gov/contact/index.cfm>

800-669-4000 (voice)

800-669-6820 v(TTY)

Section 501 Complaints - Federal employees must contact their agency's Equal Employment Opportunity (EEO) officer within 45 days of an alleged Section 501 violation.

Section 504 Complaints – These must be filed with the federal agency that funded the employer.

c) Housing

The Fair Housing Act (FHA), as amended in 1988, applies to housing. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in all housing programs and activities that are either conducted by the federal government or receive federal financial assistance. Title II of the ADA applies to housing provided by state or local governmental entities.

Complaints – Housing complaints may be filed with the Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity.

<http://www.hud.gov/fairhousing>

800-669-9777 (voice)

800-927-9275 (TTY)

d) Education

Students with disabilities in public schools (K-12) are covered by Title II of the ADA, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). Students with disabilities in public postsecondary education are covered by Title II and Section 504. Title III of the ADA applies to private schools (K-12 and post-secondary) that are not operated by religious entities. Private schools that receive federal funding are also covered by Section 504.

IDEA Complaints - Parents can request a due process hearing and a review from the state educational agency if applicable in that state. They also can appeal the state agency's decision to state or federal court. You may contact the Office of Special Education and Rehabilitation Services (OSERS) for further information or to provide your own thoughts and ideas on how they may better serve individuals with disabilities, their families and their communities.

For more information contact:

Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W
Washington, DC 20202-7100
202-245-7468 (voice)

Title II of the ADA and Section 504 Complaints - The Office for Civil Rights (OCR) in the Department of Education enforces Title II of the ADA and Section 504 as they apply to education. Those who have had access denied due to a service animal may file a complaint with OCR or file a private lawsuit in federal court. An OCR complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended for good cause. Before filing an OCR complaint against an institution, an individual may want to find out about the institution's grievance process and use that process to have the complaint resolved. However, an individual is not required by law to use the institutional grievance process before filing a complaint with OCR. If someone uses an institutional grievance process and then chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act

of the institutional grievance process.

For more information contact:

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, S.W.
Washington, DC 20202-1100
Customer Service: 800-421-3481 (voice)
800-877-8339 (TTY)
E-mail: OCR@ed.gov
<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

Title III Complaints – These may be filed with the Department of Justice.

U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Civil Rights Division
Disability Rights Section – NYA
Washington, DC 20530
<http://www.ada.gov/>
800-514-0301 (v)
800-514-0383 (TTY)

e) Transportation

Title II of the ADA applies to public transportation while Title III of the ADA applies to transportation provided by private entities. Section 504 of the Rehabilitation Act applies to federal entities and recipients of federal funding that provide transportation.

Title II and Section 504 Complaints – These may be filed with the Federal Transit Administration's Office of Civil Rights. For more information, contact:

Director, FTA Office of Civil Rights
East Building – 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, DC 20590
FTA ADA Assistance Line: 1-888-446-4511 (Voice)
1-800-877-8339 (Federal Information Relay Service)
http://www.fta.dot.gov/civil_rights.html

http://www.fta.dot.gov/12874_3889.html (Complaint Form)

Title III Complaints – These may be filed with the Department of Justice.

U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Civil Rights Division
Disability Rights Section – NYA
Washington, DC 20530
<http://www.ada.gov>
800-514-0301 (v)
800-514-0383 (TTY)

Note: A person does not have to file a complaint with the respective federal agency before filing a lawsuit in federal court.

f) Air Transportation

The Air Carrier Access Act (ACAA) covers airlines. Its regulations clarify what animals are considered service animals and explain how each type of animal should be treated.

ACAA complaints may be submitted to the Department of Transportation's Aviation Consumer Protection Division. Air travelers who experience disability-related air travel service problems may call the hotline at 1-800-778-4838 (voice) or 1-800-455-9880 (TTY) to obtain assistance. Air travelers who would like the Department of Transportation (DOT) to investigate a complaint about a disability issue must submit their complaint in writing or via e-mail to:

Aviation Consumer Protection Division
Attn: C-75-D
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

For additional information and questions about your rights under any of these laws, contact your regional ADA center at 1-800-949-4232 (voice/TTY).

Acknowledgements

The contents of this booklet were developed by the Southwest ADA Center under a grant (#H133A110027) from the Department of Education's National Institute on Disability and Rehabilitation Research (NIDRR). However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

Southwest ADA Center at ILRU
TIRR Memorial Hermann Research Center
1333 Moursund St.
Houston, Texas 77030
713.520.0232 (voice/TTY)
1.800.949.4232 (voice/TTY)
<http://www.southwestada.org>

The Southwest ADA Center is a program of ILRU (Independent Living Research Utilization) at TIRR Memorial Hermann. The Southwest ADA Center is part of a national network of ten regional ADA Centers that provide up-to-date information, referrals, resources, and training on the Americans with Disabilities Act (ADA). The centers serve a variety of audiences, including businesses, employers, government entities, and individuals with disabilities. Call 1-800-949-4232 v/tty to reach the center that serves your region or visit <http://www.adata.org>.

This book is printed courtesy of the ADA National Network. The Southwest ADA Center would like to thank **Jacquie Brennan (author)**, Ramin Taheri, Richard Petty, Kathy Gips, Sally Weiss, Wendy Strobel Gower, Erin Marie Sember-Chase, Marian Vessels, and the ADA Knowledge Translation Center at the University of Washington for their contributions to this booklet.

© Southwest ADA Center 2014. All rights reserved

Principal Investigator: Lex Frieden

Project Director: Vinh Nguyen

Publication staff: Maria del Bosque, Marisa Demaya, and George Powers

HB 1272

#14

1-27-17

Testimony in Regards to House Bill No. 1272

To: Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson
Senators Anderson, Clemens

From: Mary Douglas and Kyle Hackney, West Fargo, ND

We are both professors at North Dakota State University and a current foster family for service dogs in training in West Fargo, North Dakota. As current renters of our place of residence, we were made aware of this upcoming bill.

The language in proposed House Bill No. 1272 is not congruent with the federal Americans with Disabilities Act in regards to service animals and disability. There does not seem the need to redefine these terms differently than federal law.

Also, there does not appear to be a clause included for service dogs in training, which in the state of North Dakota have the same rights as full service dogs (Century Code 25-13-02.1). House Bill No. 1272 would potentially prohibit us from continuing to foster/train service dogs in training, as we would not be able to produce legitimate claim of disability, as this is not why the dogs are in our home. Fostering and training in public settings provide critical experiences for service dogs in training and allows them to experience scenarios as they would while working in the future.

Thank you for taking time to consider these points in regards to House Bill No. 1272.

Sub Committee 2-2-17

#1

17.0593.02000

Sixty-fifth

Legislative Assembly
of North Dakota

HOUSE BILL NO. 1272

Introduced by

Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Senators Anderson, Clemens

1 A BILL for an Act to create and enact ~~a new section to chapter 47-16~~ section 47-16-07.6 of the
North Dakota

2 Century Code, relating to ~~reasonable accommodations for service animals in rental dwelling~~

3 ~~units; and to provide a penalty~~ disability documentation for service or assistance animal in
rental dwelling; and to amend and enact section 47-16-07.5 of the North Dakota Century Code,
relating to disability documentation for service animal in rental dwelling ~~penalty for furnishing~~
fraudulent disability documentation.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 ~~SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and~~
6 ~~enacted as follows:~~

7 ~~Service animals – Housing – Penalties for furnishing fraudulent disability~~
8 ~~documentation.~~

9 1. ~~As used in this section:~~

10 a. ~~"Service animal" means any animal that serves a role for an individual with a~~
11 ~~disability as an emotional support animal, a therapy animal, or an assistance~~
12 ~~animal.~~

13 b. ~~"Disability" means a physical or mental impairment that substantially limits one or~~
14 ~~more major life activities of an individual.~~

15 2. ~~An individual is guilty of a class B misdemeanor if the individual, in an attempt to~~

16 obtain a reasonable housing accommodation under section 47-16-07.5, falsely claims
17 to have a disability that requires the use of a service animal. If an individual provides
18 documentation verifying a disability requiring the use of a service animal, the
19 documentation must originate from a medical professional licensed or certified in this
20 state. Under this section, a lessor may evict a lessee and the lessor is entitled to a
21 damage fee of one thousand dollars from a lessee if the lessee falsely claims to have
22 a disability requiring the use of a service animal.

23 **SECTION 1. AMENDMENT.** Section 47-16-07.5 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **47-16-07.5. Disability documentation for service or assistance animal in rental**
26 **dwelling.**

27 A landlord may require reliable supporting documentation be provided by a tenant of a
28 rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a
29 service or assistance animal be allowed as an accommodation on the rented premises under
30 any provision of law. Reliable supporting documentation may be provided by a physician or
31 medical professional, not operating primarily to provide certification for assistive
32 animals. Reliable supporting documentation must confirm the tenant's disability and the
33 relationship between the tenant's disability and the need for the requested accommodation. A
34 landlord may not require supporting documentation from a tenant if the tenant's disability or
35 disability-related need for a service animal or assistance animal is readily apparent or already
36 known to the landlord.

37 **SECTION 2.** Section 47-16-07.6 of the North Dakota Century Code is created and
38 enacted as follows:

39 **47-16-07.6. Penalty for furnishing fraudulent disability documentation.**

40 An individual is guilty of a class B misdemeanor if the individual, in an attempt to
41 obtain a reasonable housing accommodation under section 47 - 16 - 07.5, falsely claims
42 to have a disability that requires the use of a service animal. A lessor may evict a lessee and
the lessor is entitled to a damage fee of one thousand dollars from a lessee if the lessee falsely
claims to have a disability requiring the use of a service animal.

17.0593.02001
Title.

Prepared by the Legislative Council staff for
Representative Zubke
February 6, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1272

Page 1, line 1, remove "a new"

Page 1, line 1, replace "to chapter 47-16" with "47-16-07.6"

Page 1, line 3, after the semicolon insert "to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling;"

Page 1, replace lines 5 through 22 with:

"SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

Renumber accordingly

H.B. 1272
12
3.16.17
Written testimony #1
P. 1/3

March 16, 2017

Jeremy Petron
Lobbyist # 234
North Dakota Apartment Association

Re: HB 1272

Chairman Burckhard and members of the Committee,

My name is Jeremy Petron. I am a lobbyist for the North Dakota Apartment Association.

We support House Bill 1272.

I have worked in apartment property management for 12 years. As Regional Manager for Goldmark Property Management, I oversee day-to-day operations for 1,300 apartment units in Bismarck, and 1,700 units in Grand Forks.

Housing providers must grant reasonable accommodations to persons with disabilities that impair one or more major life activities, to allow those individuals equal opportunity to use and enjoy their dwelling unit. The most common accommodation is allowing an assistance animal in a 'no pets' building. An example would be a 'seeing-eye' dog for a visually impaired person, who would typically have a service animal that is specifically trained to provide and perform a task for that disability. A more common example, though, is an 'emotional support' assistance animal that provides comfort to persons with depression or anxiety. In most cases the accommodation requested is for a cat or dog.

I have seen first-hand the benefits to residents who legitimately need and require assistance animals. These residents tend to be responsible animal owners by picking up after their animal, keeping the apartment and premises clean, and ensuring as much as possible to not disturb the quiet enjoyment rights of other residents in the building.

I have also seen the effects of irresponsible animal owners that don't pick up waste, where there are apparent urine stains on carpet, clawed and chewed woodwork, and barking at all hours of the day. A landlord does have the right to evict and recoup damages from individuals that allow these types of disruptions and damage, but the damage has already been done. It's typically this type of resident that didn't notify the landlord that they had an animal, and when confronted about it, the answer is "I have a doctor's note". The landlord does have the right to request verification from a medical professional regarding the need for the resident's accommodation, if not readily apparent, but surprisingly a lot of these verifications come in only after the landlord finds out there is an unauthorized animal in the apartment.

It has become surprisingly easy for a resident to obtain an accommodation verification for a dog or cat from a medical professional, and word gets out quickly amongst renters. On average, 8% of residents, or 1 in 12 units has an assistance animal. Most of these are for legitimate reasons, but there are also many fraudulently claiming to have a disability in an effort to obtain an animal in a no-pets building. Even an internet search on 'how to get an assistance animal' will give you options for paid services online to obtain an accommodation verification. You fill out a simple questionnaire, pay a small fee, and typically a social worker from another state will submit a printable letter in support of the individual's need for an assistance animal. These individuals have little to lose if falsely claiming to have a disability requiring the use of a service animal or assistance animal. There is no penalty or deterrent from attempting the fraudulent activity in the first place, so why not try it if you want to get around the system and bring in your pet. Fair Housing law was not intended as a loop-hole for individuals to game-the-system in an effort to bring in a pet into a no pets building, but it is happening and the abuse of the system must stop.

This bill will help deter fraudulent activity of individuals attempting to obtain a reasonable accommodation for an animal under false claims of a disability. There are 18 states with similar laws already in place, so this issue isn't just confined to our state. The issue also continues to exist despite the increase in pet-friendly building options across North Dakota in recent years.

We do recommend additions to Section 2, lines 5 and 8, to read 'a service animal or assistance animal'. This will keep the language consistent with current statute language in section 1, and acknowledges both service and assistance animals.

We also recommend additions to Section 2, lines 5 and 8, to include 'or falsely claims to have a disability that requires the use of a service or assistance animal'. In most fraudulent situations, it is not the documentation that is fraudulent. If the medical provider states there is no disability, this indicates that the individual was attempting to fraudulently claim to have a disability.

We urge a do-pass on HB 1272, with the suggested amendments.

**65th Legislative Assembly, Political Subdivisions Committee
Public Hearing on House Bill 1272
March 16th, 2017**

Good Morning. My name is Kelly Gorz and I am a Fair Housing Specialist at High Plains Fair Housing Center and would like to thank the Chairperson and the Committee Members for the opportunity to speak today. I would also like to thank the members of the subcommittee of the Political Subdivisions Committee who worked to amend this bill from its original submission.

High Plains Fair Housing Center is a private, non-profit fair housing organization that works to eliminate housing discrimination and to ensure equal housing opportunity for all. We advocate for those who have experienced discrimination in housing based on their status in a protective class and we provide education of fair housing rights and responsibility throughout the entire state. Consistent with nationwide statistics, the number one instance of housing discrimination in North Dakota is of persons with disabilities and that is why we took interest in this bill from the beginning.

We came before the House Committee in January against the original wording of HB 1272 but come today in support of the amendments to HB 1272 and recommend a "do pass" as it is currently written. We appreciate the lessening of the penalty for fraud and feel the removing of the state licensing requirement is more in line with the Federal Fair Housing Act of 1968. As advocates for persons with disabilities, we are against fraudulent accommodation requests but also feel strongly that there is a need to keep barriers out of the request process. While we do not believe this bill is particularly necessary, as we do not often see fraud in service animal requests in North Dakota, we are satisfied with the current amended bill and can support its passing.

Thank you for your time and I am available to answer any questions.

**High Plains Fair Housing Center
1405 1st Ave North, Grand Forks, ND
701-792-2878**



H. B. 1272
3.16.17
Written Testimony #3
P. 1/6

**Testimony on HB1272
Prepared for the
Political Subdivisions Committee
March 16th, 2017**

Good morning Chairman Burckhard and members of the Political Subdivisions Committee, my name is Michelle Kommer, and I am the Commissioner of Labor. I appear before you today neutral as to the spirit and intent of HB1272, and to provide information about the relationship between this bill and the federal funding provided by the U.S. Department of Housing and Urban Development to the Department of Labor, and how this bill may affect that funding, and to provide suggestions to avoid discriminatory application of this proposed law.

HUD Cooperative Agreement. The Department of Labor and Human Rights (Department) receives and investigates complaints alleging discriminatory housing practices under the authority of N.D.C.C. ch. 14-02.5, the Housing Discrimination Act. The U.S. Department of Housing and Urban Development (HUD) has deemed the North Dakota housing law "substantially equivalent" to the federal Fair Housing Act, meaning that it offers at least the same substantive rights, procedures, remedies, and judicial review provisions as the Fair Housing Act. The *substantial equivalency status* of the state and federal law allows the Department to enter into the Cooperative Agreements with HUD. HUD then provides funding to the Department for complaint processing, administrative costs, and training funds. In the past five years (2012-16), the Department has been awarded \$624,440 through these Agreements, for an average of \$125,000 per year.

Because this Cooperative Agreement is contingent upon the continued *substantial equivalency* of the state and federal fair housing laws, if the North Dakota law were to change in a manner which makes it no longer *substantially equivalent* to the federal Fair Housing Act, the Cooperative Agreement could cease, including all related funding.

Importantly, this discontinuation of the Cooperative Agreement does not release the Department of its responsibility to continue to investigate housing discrimination claims under N.D.C.C. ch. 14-02.5. In other words, the HUD funding would go away, but the work would not. Further,

N.B. 1272
3.16.17
#3
p. 2/6

respondents to a housing discrimination claim could expect to be investigated by both the Department and HUD, with no collaboration between the investigative parties, essentially doubling the administrative burden for both the complainant and respondent.

In short, the loss of *substantial equivalency status* would result in the loss of HUD funding, which would require the Department to request an increase in general funding that corresponds with the Department's loss of HUD funds.

HB1272 and its Impacts. HB 1272 in its original form created a new section of chapter 47-16 of the North Dakota Century Code.¹ The language contained in HB 1272, as originally written, eliminated the "substantial equivalency" between state and federal law by creating requirements that were *overly restrictive* when compared to the federal Fair Housing Act. See attached letter from Joseph Pelletier, Director of the Fair Housing Assistance Program, dated January 30th, 2017.

After raising this concern at the House subcommittee hearing, we were invited to participate in amending the bill to address the matter of *substantial equivalency*, and the bill was amended to remove the language which would have resulted in loss of substantial equivalency. I am reviewing evolution of this bill here today only to emphasize the importance of ensuring that this section does not become any more restrictive through this process.

During the House subcommittee discussions, the Department of Labor did not provide input regarding the penalties associated with the offense, found in proposed section 47-16-07.6.

Subsection 2, Page No. 2, Lines 3-8

"An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

We have since reviewed that language and have concern that the language may inadvertently target a specific group of persons (those

¹ The revised bill modifies existing section 47-16-07.5 and creates a new section 47-16-07.6.

with disabilities) which could be discriminatory in application, and creates ambiguity by leaving several questions open, such as:

- Who determines if the documentation is fraudulent? (Lessor? Court of Law?)
- What standard is applied in the determination of whether a document is fraudulent? (Must the tenant "know" it's fraudulent?)
- At what point may the lessor evict the lessee? (At the lessor's discretion? After conviction?)

How the bill may be modified to eliminate concern.

I have included two alternatives, both of which mitigate concern that this provision targets a specific class of persons, and provide the lessor with guidance for applying the new law in a non-discriminatory manner.

Alternative A. The current bill limits penalties for false documentation to only those situations where a tenant provides false documentation pertaining to a disability. A broader penalty section would allow lessors to assess penalties where tenants provide false documentation of any type relating to the rental or lease of real property, while eliminating the concern that this section targets a specific class of tenants and the ambiguities noted above.

§ 47-16-07.6 False Statements or Claims in Connection with Real Property.

An individual is guilty of an infraction if the individual knowingly makes a false statement or claim or knowingly provides fraudulent supporting documentation relating to any statement or claim in connection with the rental or lease of real property. Following conviction, a lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars.

Alternative B. This alternative leaves in place its application to only those providing false documentation relating to need for a service animal, but resolves the ambiguities noted above.

"An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, knowingly makes a false claim of having a disability that requires the use of a service animal or knowingly provides fraudulent supporting documentation in connection with such a claim provides fraudulent disability documentation indicating a disability that requires the use of a service animal. Following conviction, [a] lessor may evict a lessee and the lessor is entitled to

a damage fee of one month's rent, not to exceed one thousand dollars. ~~from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."~~

These proposed revisions both serve to aid in achieving the purpose of the bill, while ensuring non-discriminatory application of the law and providing lessor's guidance in application of the law to avoid discriminatory application.

Conclusion. While the amended bill is improved from its original form, I respectfully request that the committee guard against changes to language that would affect the *substantial equivalency* status of the law, and consideration be given to providing more specificity in the penalty section to ensure practical and non-discriminatory application of the law.

Thank you and I'd be happy to answer any questions you may have.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

JAN 30 2017

L.B. 1272
3.16.17
#3
P. 5/6

Michelle L. Kommer, Commissioner
North Dakota Department of Labor
and Human Rights
600 East Boulevard Avenue, Dept. 406
Bismarck, ND 58505-0340

RE: North Dakota House Bill 1272

Dear Commissioner Kommer:

I have recently become aware of the above-referenced bill pending before the North Dakota Legislative Assembly. As set forth below, House Bill 1272 raises very serious concern with respect to the continued substantial equivalence of North Dakota's fair housing law in the area of disability discrimination.

House Bill 1272 proposes to add as new section to Chapter 47-16 of the North Dakota Century Code, governing the leasing of real property, that would, among other things, define "disability" and create requirements for the submission of documentation by an individual with a disability seeking a service animal as a reasonable accommodation.

Definition of "Disability"

Subsection 1.b of the bill would define disability to mean "a physical or mental impairment that substantially limits one or more major life activities of an individual." This definition is fundamentally inconsistent with the definition contained in the Fair Housing Act, which adds both "a record of having such impairment" and "being regarded as having such an impairment." By restricting the definition as provided in the bill, whole classes of persons may be denied the right to obtain service animals in housing as a reasonable accommodation. Note further that the definition proposed in House Bill 1272 conflicts with definition of disability provided in North Dakota's fair housing law at § 14-02.5-06.

Verification of Need for a Service Animal

Subsection 2 of the bill provides that "[i]f an individual provides documentation verifying a disability requiring the use of a service animal, the documentation must originate from a medical professional licensed or certified in this state." This provision creates a number of concerns. First, it is unclear whether the intent of the bill is to require documentation in every case. If so, this is fundamentally inconsistent with HUD's and the U.S. Department of Justice's interpretation of the Fair Housing Act. Under HUD's and DOJ's interpretation, a housing provider may not ask a tenant

HL B. 1272

3.16.17

#3

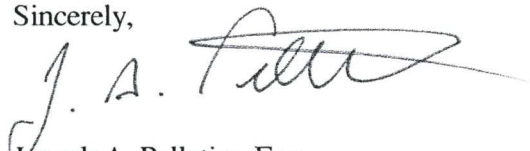
P. 6/6

or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. Note also that such a requirement would also conflict, on its face, with existing North Dakota law (see, NDCC § 47-16-07.5).

Even assuming that House Bill 1272 does not create such a requirement in every case, it is problematic insofar as it unreasonably restricts that ability of persons with disabilities to obtain verification of their disability sufficient for the housing provider to grant the reasonable accommodation request. Note that under the Fair Housing Act, depending on the circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself. Even where third-party verification is necessary, such verification may often be provided by a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability. See, HUD/DOJ *Joint Statement on Reasonable Accommodation* (May 2004) and FHEO Notice 2013-01. By restricting the verification to "medical professionals," and worse still, only those medical professionals licensed or certified in North Dakota, the bill unduly restricts the ability of persons with disabilities to obtain necessary verification.

For the reasons set forth above, House Bill 1272 creates serious concerns with respect to the continued substantial equivalence of North Dakota's fair housing law in the area of disability discrimination and North Dakota's continued participation in the Fair Housing Assistance Program. Please feel free to call me at (202) 402-2126 if you have any questions.

Sincerely,



Joseph A. Pelletier, Esq.

Director, Fair Housing Assistance Program

cc: Amy Frisk, FHEO Region VIII Director

H.B. 1272
3/23/2017
#1 pg. 1-40

NDLA, S PSD - Wocken, Mary Jo

From: Kannianen, Jordan L.
Sent: Thursday, March 23, 2017 9:58 AM
To: NDLA, S PSD - Wocken, Mary Jo
Subject: Fw: Info. Regarding HB1272
Attachments: Ltr_Hamman-Kristen_reHB1272_3-20-17.pdf

Sent from my LG Mobile

----- Original message-----

From: Kommer, Michelle L.
Date: Wed, Mar 22, 2017 12:26 PM
To: Burckhard, Randall A.; Anderson, Jr., Howard C.; Dotzenrod, Jim A.; Kannianen, Jordan L.; Larson, Diane K.; Lee, Judy E.;
Cc:
Subject: Info. Regarding HB1272

Good afternoon members of the Senate Political Subdivisions Committee,
As was mentioned by Representative Koppelman at the hearing on HB1272 on March 16th, Senator Hoeven's office was contacted by Representative Koppelman regarding this bill. On Monday of this week Kristen Hamman, Regional Director of Senator Hoeven's office, reached out to us for information. My response is attached here. I share this with you in the spirit of transparency, and in hopes that the information may be helpful in your deliberation regarding next steps with HB1272. As I mentioned in my testimony, the Department of Labor understands the intent of HB1272, and believes that it is possible to achieve that purpose without compromising the Department's partnership with HUD (and corresponding funding).

I welcome any additional conversation, and am happy to assist the committee in any way that would be helpful.
Thank you and have a great day,
Michelle

Michelle Kommer
Commissioner of Labor
North Dakota Department of Labor and Human Rights
(701) 328-3708
www.nd.gov/labor



Email Confidentiality: This e-mail and any attachments thereto is intended only for use by the addressee(s) named therein and may contain legally privileged and/or confidential information subject to protection under the law. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this e-mail and any attachments is strictly prohibited. If you receive this email in error, please notify me immediately and permanently delete the original copy and any copy or printout of same. Thank you.

Doug Burgum
Governor

Michelle Kommer
Commissioner



State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

www.nd.gov/labor
www.nd.gov/humanrights

March 20, 2017

Kristen Hamman
Regional Director
338 Russell Senate Office Building
Washington, DC 20510

DELIVERED VIA EMAIL

Dear Ms. Hamman,

I write to provide you the information you requested following your discussion with Ms. Kathy Kulesa, Human Rights Director, regarding HB1272 and its impact on the North Dakota Department of Labor's (Department's) Cooperative Agreement with the U.S. Department of Housing and Urban Development (HUD).

Briefly, the language in the original bill rendered North Dakota's law more restrictive than federal fair housing law. The result of this dissonance is the loss of "substantial equivalency" between state and federal fair housing laws. A consequence of the lack of *substantial equivalency* is the involuntary termination of our Cooperative Agreement with HUD, through which the Department investigates charges on behalf of HUD, for which we are provided federal funding.

The chronology of events relating to HB1272 follows:

- 1) January 9th: HB1272 introduced. *See Attachment A for original bill.*
- 2) January 19th: Kommer contacted by Joseph Pelletier, Director, Fair Housing Assistance Program (FHAP), U.S. Department of Housing and Urban Development. *See Attachment B for email from Pelletier to Kommer. An advocacy group had notified HUD of the proposed legislation – this email is also included at Attachment B.*
- 3) January 19th: Kommer approached Representative Koppelman on the floor of the house and relayed the concerns presented by the bill language and followed up via email. *See Attachment C for email from Kommer to Koppelman (no response received).*
- 4) January 25th: Following additional discussion with Pelletier (HUD), Kommer followed up with Koppelman, confirmed concerns, offered to provide drafting assistance to further bill's purpose but mitigate the consequence. *See Attachment C for email from Kommer to Koppelman (no response received).*
- 5) January 27th: Kommer testified before the House Political Subdivisions Committee. *See Attachment D for testimony.* A subcommittee was appointed by Chairman Klemin to examine the issue. Representative Zubke was asked to chair the subcommittee.
- 6) January 30th: Kommer met with Representative Zubke to discuss the conflict, and proposed alternative language. *See Attachment E for a copy of the follow-up email with proposed*

language. On this same day, Kommer received a letter from Pelletier/HUD outlining concerns. Also found at Attachment E.

- 7) February 14th: Amendment to HB1272 was adopted. See Attachment F for the amendment.
- 8) February 20th: The amended bill was passed on the floor of the House, 91 yeas, 1 nay. See Attachment G for Bill Actions for HB1272.
- 9) March 16th: Kommer testified before the Senate Political Subdivisions Committee, reviewing original concerns to caution against reversion to the bill's original form. See Attachment H for testimony.
 - A representative from High Plains Fair Housing, the advocacy group that first notified HUD of the bill, and opposed the bill in the House testified in favor of the bill, as amended.
 - Two individuals representing landlord interests also testified in favor of the bill.

Other information:

- Legislative History: It appears to have been the intent of the North Dakota legislature that the state and federal fair housing laws be, and remain, substantially equivalent when North Dakota's Housing Discrimination Act was implemented in 1999. See Attachment I for an excerpt from *Department of Labor v. Matrix Properties*, 2009 ND 137, 770 N.W.2d 290, stating that it was the intent of the legislature that the state and federal laws be "substantially equivalent", because it is the "key to the federal portion of funding".
- Substantial Equivalency Certification: See Attachment J for an FAQ regarding "substantial equivalency" (available at HUD website).

I hope this context is helpful. As mentioned repeatedly in my testimony and through other means, the Department understands the spirit and intent of the bill, and believes it is possible to achieve it's intended purpose without compromising the Department's partnership with HUD (and corresponding funding).

I would be pleased to discuss this matter further at your convenience, and/or provide any additional information you may need. I can be reached at mkommer@nd.gov, or directly by phone at 701-328-3708.

Best,



Michelle Kommer
Commissioner of Labor

cc: Kathy Kulesa, Human Rights Director

ATTACHMENT A

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1272

Introduced by

Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Senators Anderson, Clemens

- 1 A BILL for an Act to create and enact a new section to chapter 47-16 of the North Dakota
2 Century Code, relating to reasonable accommodations for service animals in rental dwelling
3 units; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 5 **SECTION 1.** A new section to chapter 47-16 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Service animals - Housing - Penalties for furnishing fraudulent disability**
8 **documentation.**

- 9 1. As used in this section:
- 10 a. "Service animal" means any animal that serves a role for an individual with a
11 disability as an emotional support animal, a therapy animal, or an assistance
12 animal.
- 13 b. "Disability" means a physical or mental impairment that substantially limits one or
14 more major life activities of an individual.
- 15 2. An individual is guilty of a class B misdemeanor if the individual, in an attempt to
16 obtain a reasonable housing accommodation under section 47-16-07.5, falsely claims
17 to have a disability that requires the use of a service animal. If an individual provides
18 documentation verifying a disability requiring the use of a service animal, the
19 documentation must originate from a medical professional licensed or certified in this
20 state. Under this section, a lessor may evict a lessee and the lessor is entitled to a
21 damage fee of one thousand dollars from a lessee if the lessee falsely claims to have
22 a disability requiring the use of a service animal.

ATTACHMENT B

Kommer, Michelle L.

From: Pelletier, Joseph A <Joseph.A.Pelletier@hud.gov>
Sent: Thursday, January 19, 2017 11:36 AM
To: Kulesa, Kathy K.; Kommer, Michelle L.
Cc: Frisk, Amy M; Neely-edmonds, Lynn; Grosso, Lynn M
Subject: North Dakota House Bill 1272

Importance: High

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Kathy / Michelle: I have been advised of a bill pending before the North Dakota General Assembly (please see link in the email below) that raises serious concerns with respect to the continued substantial equivalence of North Dakota's fair housing law in the area of reasonable accommodations for persons with disabilities.

Is the Department of Labor aware of this legislation? If so, please advise me of the steps your agency has taken in response to the bill. If not, please review the bill and advise me of the steps your agency will take in response to the bill.

Thank you.

*Joseph A. Pelletier
Director, Fair Housing Assistance Program
U.S. Dept. of Housing and Urban Development
(202) 402-2126*



From: Michelle Rydz High Plains Fair Housing [mailto:highplainsfairhousing@gmail.com]
Sent: Thursday, January 19, 2017 10:31 AM
To: Pelletier, Joseph A <Joseph.A.Pelletier@hud.gov>
Subject: Fair Housing Bill Introduced in North Dakota- substantial equivalence concerns

Dear Joe,

I am Michelle Rydz from the High Plains Fair Housing Center we have a bill that was introduced in North Dakota's Legislature yesterday that may impact our substantial equivalence. The bill provides penalties for someone who falsely claims to have a disability and provides fines and charges them with a class B misdemeanor.

The problem we are concerned with is the part that states **"documentation verifying a disability must originate from a medical professional licensed or certified in this state"**

I was hoping that you could take a look at this bill and provide an opinion about whether it impacts substantial equivalence. It would be great if you could write a letter. North Dakota has a rule that states that all bills have a hearing and a vote.

Introduced by: Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Senators Anderson, Clemens

<http://www.legis.nd.gov/assembly/65-2017/documents/17-0593-02000.pdf>

From the proposed bill:

An individual is guilty of a class B misdemeanor if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, falsely claims to have a disability that requires the use of a service animal. If an individual provides documentation verifying a disability requiring the use of a service animal, the documentation must originate from a medical professional licensed or certified in this state. Under this section, a lessor may evict a lessee and the lessor is entitled to a damage fee of one thousand dollars from a lessee if the lessee falsely claims to have a disability requiring the use of a service animal.

--

Michelle Rydz, Executive Director

Phone: 701-203-1077 complaint hotline

Phone Voice: 701-792-2878

Our New Address: 1405 1st Ave N, Grand Forks, ND 58203

Call us Toll Free at: 1-866-380-2738

Email: highplainsfairhousing@gmail.com

www.highplainsfhc.org

The mission of the High Plains Fair Housing Center is strengthen communities and to ensure equal access to fair housing in the region through training, education, enforcement and advocacy.

Fair Housing is a right protected by federal and state laws. Fair Housing means you may freely choose a place to live without regard to your race, color, religion, sex, national origin, or because you are disabled or have children in your family or because you are on public assistance.

Nothing in this email is legal advice. For legal advice please contact an attorney.

ATTACHMENT C

Kommer, Michelle L.

From: Kommer, Michelle L.
Sent: Wednesday, January 25, 2017 12:55 PM
To: Koppelman, Kim A.
Subject: FW: HB1272

Representative Koppelman,

We had an opportunity to follow up with Mr. Pelletier from HUD, as well as our Regional Director Lynn Frisk. They confirmed the conflict which you and I discussed, and further commented that they typically see two issues where state statutes attempt to address abuse of assistance animals – first, the requirement of proof of disability in every case (including those that are readily apparent or already known), and second, that the restrict the ability of a person with a disability in excess of what is permitted by federal law (where the disability is not readily apparent). Mr. Pelletier noted that language contained in HB1272 is representative of the latter. He reiterated that the requirement that the certification must be made by a medical professional licensed in the state of North Dakota disrupts substantial equivalency. He noted that he is not aware of any states that have deviated from federal law in their state statute, so had no statutory examples to provide. He also observed that the definition of “disability” contained in HB1272 is in conflict with the definition contained in NDCC14-02.5-01.

With your permission, I would be happy make suggestions/ draft an amendment that would remedy these conflicts. I look forward to your thoughts.

Thanks,
Michelle

Michelle Kommer
Commissioner of Labor
North Dakota Department of Labor and Human Rights
(701) 328-3708
www.nd.gov/labor



Email Confidentiality: This e-mail and any attachments thereto is intended only for use by the addressee(s) named therein and may contain legally privileged and/or confidential information subject to protection under the law. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this e-mail and any attachments is strictly prohibited. If you receive this email in error, please notify me immediately and permanently delete the original copy and any copy or printout of same. Thank you.

From: Kommer, Michelle L.
Sent: Thursday, January 19, 2017 6:01 PM
To: Koppelman, Kim A. <kkoppelman@nd.gov>
Subject: HB1272

Representative Koppelman,

Thanks for your time and guidance today. I had a chance to review the CFR governing substantial equivalence (24 CFR Part 115), our agreement with HUD, HUD-issued guidance pertaining to service and assistance animals, as well as our

last Performance Assessment Report (PAR) which speaks to "substantial equivalency". I have included links (or attachments) to that information here, along with the email I received from HUD Director Pelletier today.

This is a link to a memo from HUD - "Guidance Regarding Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs". At the bottom of page 3/top of page 4 you will see instruction regarding the type of documentation required.

https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

This is an FAQ re: Substantial Equivalency:

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/equivalency-faqs

This is a link to an explanation of how "substantial equivalency" is determined.

https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/equivalency

The .pdf document attached entitled "NDDOLHRPAR..." is the NDDOL's last PAR which includes evaluation of substantial equivalency at page 13.

Upon reviewing this information further, it appears more certain than when we first visited that the language proposed in HB1272 would be viewed to interfere with "substantial equivalency". I have left a message for Mr. Pelletier to call me tomorrow to discuss further. I will ask him if he is aware of other state statutes that accomplish the purpose of HB1272, and will also see if I can locate any with my own research. I will share with you any new information/views that arise from that discussion.

Thank you,

Michelle Kommer

Commissioner of Labor

North Dakota Department of Labor and Human Rights

(701) 328-3708

www.nd.gov/labor



Email Confidentiality: This e-mail and any attachments thereto is intended only for use by the addressee(s) named therein and may contain legally privileged and/or confidential information subject to protection under the law. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this e-mail and any attachments is strictly prohibited. If you receive this email in error, please notify me immediately and permanently delete the original copy and any copy or printout of same. Thank you.

ATTACHMENT D



**Testimony on HB1272
Prepared for the
Political Subdivisions Committee**

January 27th, 2017

Good morning Chairman Klemin and members of the Political Subdivisions Committee, my name is Michelle Kommer, and I am the Commissioner of Labor. I appear before you today neutral as to the spirit and intent of HB1272, and to provide information as to how the bill, as written, would cause the Department of Labor and Human Rights (Department) to become non-compliant with its Cooperative Agreement (Agreement) with the U.S. Department of Housing and Urban Development, the consequences associated with non-compliance, and how the bill may be modified to eliminate that concern.

HUD Cooperative Agreement. The Department receives and investigates complaints alleging discriminatory housing practices under the authority of N.D.C.C. ch. 14-02.5, the Housing Discrimination Act. The U.S. Department of Housing and Urban Development (HUD) has deemed the North Dakota housing law "substantially equivalent" to the Fair Housing Act, meaning that it offers at least the same substantive rights, procedures, remedies, and judicial review provisions as the federal Fair Housing Act. The substantial equivalency status of the law allows the Department to enter into the Cooperative Agreements with HUD. HUD then provides funding to the Department for complaint processing, administrative costs, and training funds. In the past five years (2012-16), the Department has been awarded \$624,440 through these Agreements, for an average of \$125,000 per year.

HB1272 and its Impacts. HB 1272 creates a new section of chapter 47-16 of the North Dakota Century Code.¹ The language contained in HB 1272, as written, eliminates the "substantial equivalency" between state and federal law by creating requirements that are *overly restrictive* when compared to federal law.

¹ It is unclear whether this new section replaces **47-16-07.5 Disability documentation for service or assistance animal in rental dwelling** or creates a new and separate section. This testimony assumes that the proposed language amends this section, but if that is not the intent, then the conflict between this new section and existing section 47-16-07.5 should be resolved.

Subsection 2, Page No. 1, Lines 18-20

Specifically, HB1272 requires that the documentation provided to verify the need for accommodation "...must originate from a medical professional licensed or certified in this state."

These requirements restrict the ability of a person with a disability in excess of what is permitted by federal law:

- "...must originate..."
- "...from a medical professional..."
- "...licensed or certified in this state."

In contrast, federal law permits documentation from a variety of sources² (other than a medical professional), without geographic restriction, as long as the documentation provider is "in a position to know about the individual's disability"³.

Further, the definition of "disability" in HB1272 does not correspond with the definition of "disability" in NDCC § 14-02.5-01.

Other. It should be noted that the loss of substantial equivalency certification does not release the Department of its responsibility to continue to investigate housing discrimination claims under N.D.C.C. ch. 14-02.5. In other words, the HUD funding would go away, but the work would not. Further, respondents to a housing discrimination claim could expect to be investigated by both the Department and HUD, with no collaboration between the investigative parties, essentially doubling the administrative burden for both the complainant and respondent. Should HB1272 pass as written, the Department would lose its substantial equivalency status upon implementation. Because the Department's work does not also shift, it would be necessary to request an increase in general funding that corresponds with the Department's loss of HUD funds.

Conclusion. For these reasons, I respectfully request a modification to HB1272 to preserve the substantial equivalency status between state and federal fair housing laws.

Thank you and I'd be happy to answer any questions you may have.

² A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

³ Reasonable Accommodations Under the Fair Housing Act (May 17, 2004), U.S. Department of Housing and Urban Development/Department of Justice Joint Memorandum can be found at <https://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

ATTACHMENT E

Kommer, Michelle L.

From: Kommer, Michelle L.
Sent: Monday, January 30, 2017 2:31 PM
To: Zubke, Denton B.
Subject: Follow-up
Attachments: North Dakota House Bill 1272 (013017).pdf

Hello Representative Zubke,

Nice to meet you earlier, and thanks again for your flexibility. Immediately following our discussion today, I received the attached letter from HUD via email, confirming the conflict/consequence that was discussed at the hearing last week. I called Mr. Pelletier and we had a productive conversation about how we might accomplish the bill's purpose without eliminating "substantial equivalency". As a result of ideas exchanged in that conversation (and information contained in the attached letter), instead of amending language contained in HB1271, you might consider amending existing NDCC 41-16-07.5 and adding a new section 41-16-07.6.

The current language of that statute is as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

This statute could be amended as follows (amendments in red):

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation **may** be provided by a physician or medical professional, not operating primarily to provide certifications for assistive animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

** it is important to clarify that the word "may", if changed to "must", will similarly violate "substantial equivalency".*

A new section could be added to address the penalty:

47-16-07.6. Penalty for furnishing fraudulent disability documentation. [Insert language relating to penalty.]

This change may accomplish both objectives (curbing perceived abuse of online documentation and adding a penalty), without compromising "substantial equivalency". If the subcommittee chooses not to accept this recommendation and proceed with the language of HB1246, per the attached letter I recommend also addressing the conflict in the definition of "disability" in addition to striking the words that compromise "substantial equivalency" (if you elect to use this proposed language above, that conflict is eliminated).

Thanks and I am happy to assist you further should that be helpful.

Michelle Kommer

Commissioner of Labor

North Dakota Department of Labor and Human Rights

(701) 328-3708

www.nd.gov/labor



Email Confidentiality: This e-mail and any attachments thereto is intended only for use by the addressee(s) named therein and may contain legally privileged and/or confidential information subject to protection under the law. If you are not the intended recipient of this e-mail, you are hereby notified any dissemination, distribution or copying of this e-mail and any attachments is strictly prohibited. If you receive this email in error, please notify me immediately and permanently delete the original copy and any copy or printout of same. Thank you.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

JAN 30 2017

Michelle L. Kommer, Commissioner
North Dakota Department of Labor
and Human Rights
600 East Boulevard Avenue, Dept. 406
Bismarck, ND 58505-0340

RE: North Dakota House Bill 1272

Dear Commissioner Kommer:

I have recently become aware of the above-referenced bill pending before the North Dakota Legislative Assembly. As set forth below, House Bill 1272 raises very serious concern with respect to the continued substantial equivalence of North Dakota's fair housing law in the area of disability discrimination.

House Bill 1272 proposes to add as new section to Chapter 47-16 of the North Dakota Century Code, governing the leasing of real property, that would, among other things, define "disability" and create requirements for the submission of documentation by an individual with a disability seeking a service animal as a reasonable accommodation.

Definition of "Disability"

Subsection 1.b of the bill would define disability to mean "a physical or mental impairment that substantially limits one or more major life activities of an individual." This definition is fundamentally inconsistent with the definition contained in the Fair Housing Act, which adds both "a record of having such impairment" and "being regarded as having such an impairment." By restricting the definition as provided in the bill, whole classes of persons may be denied the right to obtain service animals in housing as a reasonable accommodation. Note further that the definition proposed in House Bill 1272 conflicts with definition of disability provided in North Dakota's fair housing law at § 14-02.5-06.

Verification of Need for a Service Animal

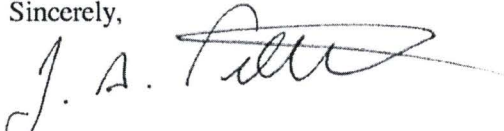
Subsection 2 of the bill provides that "[i]f an individual provides documentation verifying a disability requiring the use of a service animal, the documentation must originate from a medical professional licensed or certified in this state." This provision creates a number of concerns. First, it is unclear whether the intent of the bill is to require documentation in every case. If so, this is fundamentally inconsistent with HUD's and the U.S. Department of Justice's interpretation of the Fair Housing Act. Under HUD's and DOJ's interpretation, a housing provider may not ask a tenant

or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. Note also that such a requirement would also conflict, on its face, with existing North Dakota law (see, NDCC § 47-16-07.5).

Even assuming that House Bill 1272 does not create such a requirement in every case, it is problematic insofar as it unreasonably restricts that ability of persons with disabilities to obtain verification of their disability sufficient for the housing provider to grant the reasonable accommodation request. Note that under the Fair Housing Act, depending on the circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself. Even where third-party verification is necessary, such verification may often be provided by a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability. See, *HUD/DOJ Joint Statement on Reasonable Accommodation* (May 2004) and *FHEO Notice 2013-01*. By restricting the verification to "medical professionals," and worse still, only those medical professionals licensed or certified in North Dakota, the bill unduly restricts the ability of persons with disabilities to obtain necessary verification.

For the reasons set forth above, House Bill 1272 creates serious concerns with respect to the continued substantial equivalence of North Dakota's fair housing law in the area of disability discrimination and North Dakota's continued participation in the Fair Housing Assistance Program. Please feel free to call me at (202) 402-2126 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. A. Pelletier", with a stylized flourish at the end.

Joseph A. Pelletier, Esq.
Director, Fair Housing Assistance Program

cc: Amy Frisk, FHEO Region VIII Director

ATTACHMENT F

17.0593.02001

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1272

Introduced by

Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Senators Anderson, Clemens

1 A BILL for an Act to create and enact ~~a new section to chapter 47-16~~ 47-16-07.6 of the North
2 Dakota Century Code, relating to reasonable accommodations for service animals in rental
3 dwelling units; ~~to amend and reenact section 47-16-07.5 of the North Dakota Century Code,~~
4 ~~relating to disability documentation for service or assistance animals in a rental dwelling;~~ and to
5 provide a penalty.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 ~~SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created~~
8 ~~and enacted as follows:~~
9 ~~Service animals - Housing - Penalties for furnishing fraudulent disability~~
10 ~~documentation.~~
11 ~~1. As used in this section:~~
12 ~~a. "Service animal" means any animal that serves a role for an individual with a~~
13 ~~disability as an emotional support animal, a therapy animal, or an assistance~~
14 ~~animal.~~
15 ~~b. "Disability" means a physical or mental impairment that substantially limits one or~~
16 ~~more major life activities of an individual.~~
17 ~~2. An individual is guilty of a class B misdemeanor if the individual, in an attempt to~~
18 ~~obtain a reasonable housing accommodation under section 47-16-07.5, falsely claims~~
19 ~~to have a disability that requires the use of a service animal. If an individual provides~~
20 ~~documentation verifying a disability requiring the use of a service animal, the~~
21 ~~documentation must originate from a medical professional licensed or certified in this~~
22 ~~state. Under this section, a lessor may evict a lessee and the lessor is entitled to a~~
23 ~~damage fee of one thousand dollars from a lessee if the lessee falsely claims to have~~
24 ~~a disability requiring the use of a service animal.~~

17.0593.02001

1 **SECTION 1. AMENDMENT.** Section 47-16-07.5 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **47-16-07.5. Disability documentation for service or assistance animal in rental**
4 **dwelling.**

5 A landlord may require reliable supporting documentation be provided by a tenant of a
6 rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a
7 service animal or assistance animal be allowed as an accommodation on the rented premises
8 under any provision of law. Reliable supporting documentation may be provided by a physician
9 or medical professional who does not operate primarily to provide certification for service or
10 assistance animals. Reliable supporting documentation must confirm the tenant's disability and
11 the relationship between the tenant's disability and the need for the requested accommodation.
12 A landlord may not require supporting documentation from a tenant if the tenant's disability or
13 disability-related need for a service animal or assistance animal is readily apparent or already
14 known to the landlord.

15 **SECTION 2.** Section 47-16-07.6 of the North Dakota Century Code is created and enacted
16 as follows:

17 **47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability**
18 **documentation.**

19 An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable
20 housing accommodation under section 47-16-07.5, provides fraudulent disability documentation
21 indicating a disability that requires the use of a service animal. A lessor may evict a lessee and
22 the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars,
23 from a lessee if the lessee provides fraudulent disability documentation indicating a disability
24 requiring the use of a service animal.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1272

Page 1, line 1, remove "a new"

Page 1, line 1, replace "to chapter 47-16" with "47-16-07.6"

Page 1, line 3, after the semicolon insert "to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling;"

Page 1, replace lines 5 through 22 with:

"SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47-16-07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

Renumber accordingly

ATTACHMENT G

North Dakota Legislative Branch

Bill Actions for HB 1272

Send me to Bill No. (9999):

Go!

HJ=House Journal; SJ=Senate Journal

Introduced by Rep. K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Introduced by Sen. Anderson, Clemens

A BILL for an Act to create and enact section 47-16-07.6 of the North Dakota Century Code, relating to reasonable accommodations for service animals in rental dwelling units; to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling; and to provide a penalty.

Date	Chamber	Meeting Description	Journal
01/09	House	Introduced, first reading, referred Political Subdivisions Committee	HJ 87
01/27	House	Committee Hearing 09:00	
02/13	House	Reported back amended, do pass, amendment placed on calendar 12 2 1	HJ 497
02/14	House	Amendment adopted, placed on calendar	HJ 505
02/20	House	Second reading, passed, yeas 91 nays 1	HJ 638
02/21	Senate	Received from House	SJ 593
		Introduced, first reading, referred Political Subdivisions Committee	SJ 602
03/16	Senate	Committee Hearing 09:00	

[Back to top](#)

ATTACHMENT H



**Testimony on HB1272
Prepared for the
Political Subdivisions Committee
March 16th, 2017**

Good morning Chairman Burckhard and members of the Political Subdivisions Committee, my name is Michelle Kommer, and I am the Commissioner of Labor. I appear before you today neutral as to the spirit and intent of HB1272, and to provide information about the relationship between this bill and the federal funding provided by the U.S. Department of Housing and Urban Development to the Department of Labor, and how this bill may affect that funding, and to provide suggestions to avoid discriminatory application of this proposed law.

HUD Cooperative Agreement. The Department of Labor and Human Rights (Department) receives and investigates complaints alleging discriminatory housing practices under the authority of N.D.C.C. ch. 14-02.5, the Housing Discrimination Act. The U.S. Department of Housing and Urban Development (HUD) has deemed the North Dakota housing law "substantially equivalent" to the federal Fair Housing Act, meaning that it offers at least the same substantive rights, procedures, remedies, and judicial review provisions as the Fair Housing Act. The *substantial equivalency status* of the state and federal law allows the Department to enter into the Cooperative Agreements with HUD. HUD then provides funding to the Department for complaint processing, administrative costs, and training funds. In the past five years (2012-16), the Department has been awarded \$624,440 through these Agreements, for an average of \$125,000 per year.

Because this Cooperative Agreement is contingent upon the continued *substantial equivalency* of the state and federal fair housing laws, were the North Dakota law change in a manner which makes it no longer *substantially equivalent* to the federal Fair Housing Act, the Cooperative Agreement could cease, including all related funding.

Importantly, this discontinuation of the Cooperative Agreement does not release the Department of its responsibility to continue to investigate housing discrimination claims under N.D.C.C. ch. 14-02.5. In other words, the HUD funding would go away, but the work would not. Further,

respondents to a housing discrimination claim could expect to be investigated by both the Department and HUD, with no collaboration between the investigative parties, essentially doubling the administrative burden for both the complainant and respondent.

In short, the loss of *substantial equivalency status* would result in the loss of HUD funding, which would require the Department to request an increase in general funding that corresponds with the Department's loss of HUD funds.

HB1272 and its Impacts. HB 1272 in its original form created a new section of chapter 47-16 of the North Dakota Century Code.¹ The language contained in HB 1272, as originally written, eliminated the "substantial equivalency" between state and federal law by creating requirements that were overly *restrictive* when compared to the federal Fair Housing Act. See attached letter from Joseph Pelletier, Director of the Fair Housing Assistance Program, dated January 30th, 2017.

After raising this concern at the House subcommittee hearing, we were invited to participate in amending the bill to address the matter of *substantial equivalency*, and the bill was amended to remove the language which would have resulted in loss of substantial equivalency. I am reviewing evolution of this bill here today only to emphasize the importance of ensuring that this section does not become any more restrictive through this process.

During the House subcommittee discussions, the Department of Labor did not provide input regarding the penalties associated with the offense, found in proposed section 47-16-07.6.

Subsection 2, Page No. 2, Lines 3-8

"An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal."

We have since reviewed that language and have concern that the language may inadvertently target a specific group of persons (those

¹ The revised bill modifies existing section 47-16-07.5 and creates a new section 47-16-07.6.

with disabilities) which could be discriminatory in application, and creates ambiguity by leaving several questions open, such as:

- Who determines if the documentation is fraudulent? (Lessor? Court of Law?)
- What standard is applied in the determination of whether a document is fraudulent? (Must the tenant "know" it's fraudulent?)
- At what point may the lessor evict the lessee? (At the lessor's discretion? After conviction?)

How the bill may be modified to eliminate concern.

I have included two alternatives, both of which mitigate concern that this provision targets a specific class of persons, and provide the lessor with guidance for applying the new law in a non-discriminatory manner.

Alternative A. The current bill limits penalties for false documentation to only those situations where a tenant provides false documentation pertaining to a disability. A broader penalty section would allow lessors to assess penalties where tenants provide false documentation of any type relating to the rental or lease of real property, while eliminating the concern that this section targets a specific class of tenants and the ambiguities noted above.

§ 47-16-07.6 False Statements or Claims in Connection with Real Property. *An individual is guilty of an infraction if the individual knowingly makes a false statement or claim or knowingly provides fraudulent supporting documentation relating to any statement or claim in connection with the rental or lease of real property. Following conviction, a lessor may evict a lessee and the lessor is entitled to a damage fee of one month's rent, not to exceed one thousand dollars.*

Alternative B. This alternative leaves in place its application to only those providing false documentation relating to need for a service animal, but resolves the ambiguities noted above.

"An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, knowingly makes a false claim of having a disability that requires the use of a service animal or knowingly provides fraudulent supporting documentation in connection with such a claim provides fraudulent disability documentation indicating a disability that requires the use of a service animal. Following conviction, [a] lessor may evict a lessee and the lessor is entitled to

a damage fee of one month's rent, not to exceed one thousand dollars. ~~from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal.~~"

These proposed revisions both serve to aid in achieving the purpose of the bill, *while* ensuring non-discriminatory application of the law and providing lessor's guidance in application of the law to avoid discriminatory application.

Conclusion. While the amended bill is improved from its original form, I respectfully request that the committee guard against changes to language that would affect the *substantial equivalency* status of the law, and consideration be given to providing more specificity in the penalty section to ensure practical and non-discriminatory application of the law.

Thank you and I'd be happy to answer any questions you may have.

ATTACHMENT I

alternative claim that Matrix had engaged in a pattern or practice of discrimination because the State had failed to first make an administrative determination of reasonable cause.

II

[¶4] The only issue the State raises on appeal is whether the district court erred in ruling its civil action based on an alleged discriminatory housing practice was barred by the two-year statute of limitations in 42 U.S.C. § 3613(a)(1)(A) and N.D.C.C. § 14-02.5-39(1).

[¶5] In Grinnell Mut. Reinsurance Co. v. Thies, 2008 ND 164, ¶ 5, 755 N.W.2d 852 (citations omitted), we outlined our standard for review of summary judgments:

Summary judgment is a procedural device for promptly resolving a controversy on the merits without a trial if either party is entitled to judgment as a matter of law, and if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving disputed facts would not alter the result. A party moving for summary judgment has the burden of proving there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, a court must view the evidence in the light most favorable to the party opposing the motion and must give that party the benefit of all favorable inferences that reasonably can be drawn from the evidence. Whether a district court properly granted summary judgment is a question of law that we review de novo on the record.

The determination of when a cause of action accrues is generally a question of fact, but if there is no dispute about the relevant facts, the determination is a question of law for the court. See Tarnavsky v. McKenzie County Grazing Ass'n, 2003 ND 117, ¶ 9, 665 N.W.2d 18.

III

[¶6] The Legislature adopted North Dakota's Housing Discrimination Act, N.D.C.C. ch. 14-02.5, in 1999. See 1999 N.D. Sess. Laws ch. 134. The legislation was designed to accomplish two goals: "First, it establishes a regulatory authority and administrative process for receiving and investigating charges of housing discrimination under state law. . . Second[], it provides for state enforcement of federal fair housing law, provided that its provisions are 'substantially equivalent' to . . . those in the Federal Fair Housing Act." Hearing on HB 1043 Before House Judiciary Comm., 56th N.D. Legis. Sess. (Jan. 12, 1999) (written testimony of Mark



Bachmeier, Interim Department of Labor Commissioner). The "substantial equivalency" component was "the key to the federal portion of funding" because "[a]gencies enforcing state or local laws with provisions substantially equivalent to those of the Federal Fair Housing Act are eligible to receive federal funds from HUD [Department of Housing and Urban Development] to investigate charges of housing discrimination filed under federal law." Hearing on HB 1043 Before Senate Appropriations Comm., 56th N.D. Legis. Sess. (March 25, 1999) (written testimony of Mark Bachmeier, Interim Department of Labor Commissioner). According to the State, North Dakota's Housing Discrimination Act has been certified by the Secretary of HUD as being substantially equivalent to the rights, procedures, and remedies created under the federal FHA. See 42 U.S.C. § 3610(f)(3)(A). Under the federal and state acts, "discrimination" is defined to include a failure to "design and construct" covered multifamily dwellings that comport with certain accessibility requirements for handicapped persons. See 42 U.S.C. § 3604(f)(3)(C); N.D.C.C. § 14-02.5-06(3)(c).

[¶7] Under 42 U.S.C. § 3613(a) and N.D.C.C. § 14-02.5-39, an aggrieved person may bring a civil action to enforce these design and construction requirements. However, the civil action must be brought "not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice." N.D.C.C. § 14-02.5-39(1); see also 42 U.S.C. § 3613(a)(1)(A) ("not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, . . . whichever occurs last"). The State argues the two-year limitation period began to run only when Johnson discovered the design and construction flaws in the Stonebridge Apartments, and the lawsuit was therefore brought in a timely manner. Matrix and the other defendants argue, and the district court concluded, the two-year limitation period began to run in 1998 when Fargo issued the certificate of occupancy, and because the lawsuit was not brought until 2005, it is time barred.

[¶8] The interpretation of 42 U.S.C. § 3613(a)(1)(A) and N.D.C.C. § 14-02.5-39(1) presents a question of law. See Sauby v. City of Fargo, 2008 ND 60, ¶ 8, 747 N.W.2d 65. The rules of statutory construction are well established:

The primary objective in interpreting a statute is to determine the intent of the legislature by first looking at the language of the statute. Amerada Hess Corp. v. State ex rel. Tax Comm'r, 2005 ND 155, ¶ 12, 704 N.W.2d 8. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined in the code or unless the drafters clearly intended otherwise. N.D.C.C. § 1-02-02. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1-02-09.1. If the language of a statute is clear

ATTACHMENT J

Frequently Asked Questions About Substantial Equivalence Certification

What is the legal authority for substantial equivalence certification?

What types of organizations are eligible to apply for substantial equivalence certification?

How does an agency request substantial equivalence certification?

What is HUD's procedure for reviewing a request for substantial equivalence certification?

What if a state or local law contains additional protected classes beyond those in the Fair Housing Act?

What funding activities are allowable for interim and certified FHAP agencies?

What are the responsibilities of agencies with substantial equivalence certification?

What is the legal authority for substantial equivalence certification?

Substantial equivalence certification is authorized by Section 810(f) and Section 817 of the federal **Fair Housing Act**, and 42 U.S.C. § 3535(d). The regulations governing substantial equivalence are located at 24 CFR Part 115.

When enacting or revising a fair housing law with the goal of substantial equivalence certification, agencies should rely upon the entire federal Fair Housing Act and its implementing regulations.

What types of organizations are eligible to apply for substantial equivalence certification?

Section 810(f) of the federal Fair Housing Act limits the receipt of substantial equivalence certification to public agencies. Therefore, private organizations are not eligible. A state or local government agency with the authority to administer a fair housing law may apply for and obtain substantial equivalence certification. In considering eligibility, HUD may also

take into consideration whether the jurisdiction is already served by a FHAP agency.

How does an agency request substantial equivalence certification?

A request for substantial equivalence certification must be submitted to HUD by the official having the principal responsibility for the administration of the state or local fair housing law.

The request must include the text of the fair housing statute or ordinance and any pertinent regulations, rules, directives or formal opinions by the jurisdiction's chief legal officer. In addition, the name and contact information (including address, telephone number, fax number, and e-mail address) for the person at the state or local agency that HUD should speak to about changes to the law must be included. An agency should direct its request for substantial equivalence to:

**The Assistant Secretary for Fair
Housing and Equal Opportunity
U.S. Department of Housing and
Urban Development
451 Seventh Street, SW
Washington, DC 20410**

What is HUD's procedure for reviewing a request for substantial equivalence certification?

Upon receipt of a request for substantial equivalence certification, the Office of Fair Housing and Equal Opportunity (FHEO) will review the request for completeness, acknowledge receipt of the request and, if necessary, secure additional information from the agency. With the assistance of HUD's Office of General Counsel, FHEO will then conduct a legal review of the agency's law to determine if it meets the criteria set forth in 24 CFR Section 115.204 (i.e., whether the law, on its face, provides substantive rights, procedures, remedies and the availability of judicial review that are substantially equivalent to the federal Fair Housing Act).

Following the legal review, FHEO may inform the agency of HUD's intent to offer interim certification. Alternatively, if HUD's legal review indicates that the law does not meet the criteria set forth in 24 CFR Section 115.204, FHEO will forward a legal analysis to the agency that identifies deficiencies in its law and how it may cure the deficiencies in its law (e.g., through amendment or through the enactment of rules, regulations or other policy guidance).

The agency may utilize the legal analysis as a guide in revising its legislation and resubmit another version to the Department for review. Resubmissions to HUD for legal analysis must include an entire copy of the agency's fair housing law, even if the state or local agency made only minor changes to the law. The agency should assure that all identified deficiencies are corrected in subsequent legislation forwarded to HUD.

Subject to resources HUD may review an agency's proposed legislation. However, an offer of interim certification is dependant upon enactment of a substantially equivalent law.

What if a state or local law contains additional protected classes beyond those in the Fair Housing Act?

In order to obtain certification, a state or local law must cover the protected classes in the fair housing act (race, color, national origin, religion, sex, disability and familiar status). A state or local that provides for additional protected classes may still be determined to be substantially equivalent.

What funding activities are allowable for interim and certified FHAP agencies?

A variety of **FHAP funds** are available to agencies with substantial equivalence interim certification and certification. Interim certification allows agencies to receive capacity building funds. These funds are to be used to provide complaint activities and to support activities that produce increased awareness of fair housing rights and remedies. Certified agencies can receive funds for complaint

processing, administrative costs, partnerships, and funds for special enforcement activities. Both interim and fully certified agencies can receive funds for training.

What are the responsibilities of agencies with substantial equivalence certification?

The FHAP is intended as an intergovernmental enforcement partnership between HUD and the state or local agencies. As in any partnership, both parties must contribute to the success of the program.

While HUD provides significant resources to FHAP agencies in the form of training, technical assistance and funding, the FHAP agencies must demonstrate a commitment to thorough and professional complaint processing. This includes all phases of complaint processing, from accurate identification of issues at intake, through complete and sound investigations, to following through on administrative or judicial enforcement to ensure that victims of unlawful housing discrimination are fully compensated and the public interest is served. FHAP agencies should also work to develop relationships with public, private, and non-profit organizations in a grass roots approach to making fair and open housing a reality.

Of equal importance, the political jurisdictions in which they operate must understand their own commitment and must support the existence and the work of the FHAP agencies. Funding provided by HUD is not intended to cover 100 percent of the costs of the FHAP agencies' operations, therefore local resources must be provided by the jurisdiction to their respective FHAP agencies. Resources from the jurisdiction include not only funding but also the legal resources necessary to pursue administrative and/or judicial enforcement.

state or local agencies interested in participating in the FHAP should also consult the specific requirements enumerated in 24 C.F.R. § 115.307.

Additional questions about substantial equivalence certification should be directed to

Joseph A. Pelletier at **Joseph.A.Pelletier@hud.gov** or call (202) 402-2126.

Back to top

L.B. 1272
3-24-17
#1

Koppelman, Kim A.

From: Koppelman, Kim A.
Sent: Thursday, March 23, 2017 10:44 AM
To: -Grp-NDLA Senate Political Subdivisions
Subject: FW: SB 1272 Proposed Amendments
Attachments: SB 1272_Marked Up Amendment Instructions.docx; Proposed Amendments to Engrossed HB No. 1272.docx

Mr. Chairman and Members of the Committee,

As promised, please find attached, my proposed amendments for SB 1272. While I believe that the subcommittee which worked on the bill in the House did a good job, I believe that there are just a couple of minor deficiencies in the wording of the bill, as it came to you from the House, which should be corrected.

The intent of the provider wording is sound, but as phrased, I believe it describes virtually no one, as I doubt whether anyone "operates primarily to provide certification for service animals". They are likely licensed or engaged, here or somewhere else, for other activities or scopes of practice. The problem, however, as I indicated in my testimony to the Committee, is that there may be people who, for example, are licensed social workers in California, but who have a sideline of providing these types of "certifications" via the internet, without ever examining, meeting or visiting directly with a subject or patient in North Dakota.

Adding the wording "in this state", therefore, would greatly strengthen the wording of the bill and get at its intended purpose more effectively, I believe.

Secondly, coupling the amount of the rent with the fee which may be assessed in cases of fraud, I believe, muddies the water. A penalty (which is what this is) should be based upon the offense, not the amount of rent one happens to pay. Landlords can also attest that, when anything is coupled with an amount equal to a tenant's monthly rent, it is often mistaken as "last month's rent". In such cases, tenants often leave a rental property, assuming or asserting that their last month's rent has been paid by virtue of the other fee or charge, leaving the landlord to have to take legal collection action to attempt to collect the actual last month's rent. A differing amount, however, lessens such confusion.

I suggest, accordingly, the change back to a flat fee, rather than the coupling with the amount of the last month's rent, as the other suggested amendment to the bill.

I hope this is helpful and ask that you attach the suggested amendments and give the bill a "do pass" recommendation.

Should you have any questions, please don't hesitate to contact me.

Respectfully Submitted,

Rep. Kim Koppelman

North Dakota

West Fargo, ND -- District 13

Chairman, Judiciary Committee

Chairman, Suggested State Legislation Committee of the Council of State Governments

Past Chairman, Administrative Rules Committee, Constitutional Revision Committee

Past National Chairman, The Council of State Governments (CSG)

Business Office: 701-492-7317; Capitol: 701-328-2916

Prepared for Representative K. Koppelman
Prepared by House Political Subdivisions Committee Intern
March 23, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1272

Page 1, line 14, after "operate" insert "in this state"

Page 2, line 6, remove "one month's rent"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1272

SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate in this state primarily to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47 - 16 - 07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, provides fraudulent disability documentation indicating a disability that requires the use of a service animal. A lessor may evict a lessee and the lessor is entitled to a damage fee ~~of one month's rent~~, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal.

21.0.1272
3.24.17
#2

17.0593.#####

DRAFT

Sixty-fifth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENT TO HB 1272

Introduced by

Representatives K. Koppelman, Kading, Kasper, Lefor, Louser, Olson

Senators Anderson, Clemens

A BILL for an Act to create and enact section 47-16-07.6 of the North Dakota Century Code, relating to reasonable accommodations for service animals in rental dwelling units; to amend and reenact section 47-16-07.5 of the North Dakota Century Code, relating to disability documentation for service or assistance animals in a rental dwelling; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-07.5 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician or medical professional who does not operate primarily in this state solely to provide certification for service or assistance animals. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. 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.

SECTION 2. Section 47-16-07.6 of the North Dakota Century Code is created and enacted as follows:

47 - 16 - 07.6. Service animals - Housing - Penalties for furnishing fraudulent disability documentation.

An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47 - 16 - 07.5, ~~provides fraudulent disability documentation indicating a disability that requires the use of a service animal~~ knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim. ~~A~~Following a determination, a lessor may evict a lessee and the lessor is entitled to a damage fee ~~of one month's rent~~, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.