2009 SENATE JUDICIARY

SB 2211

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2211

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7861

Committee Clerk Signature	

Minutes:

Senator Nething opened the hearing on SB 2211.

Senator Nelson introduced the SB 2211 (see attached testimony #1). This bill adds a penalty clause and changes the definition from assistance dog to service animals throughout.

David Green testified in favor of the bill (see attached testimony #2).

Cindy Feland, Burleigh County State's Attorney's Office, in looking through this bill and its companion we have looked at it as an equity issue. When you look at a lot of these types of cases typically, what we would look at is a criminal mischief case which involves property. In this case a dog can be classified as property. When you look at the penalty levels of this bill and you compare it with the property value under criminal mischief I think this bill is lacking and needs an increase in penalty. I brought a proposed amendment (see attachment #3). If you look at all other sections in the code, when we deal with property that exceeds the value of $500 we are talking about a C felony. In this case clearly the purchase of the animal outweighs that. Over $10,000 mark it is listed as a class B felony. Just listing to the testimony clearly these animals have a substantial value higher than what we would typically look at under the penalties proposed in this bill.

Senator Fiebiger a service animal has a specific definition. Some of the work I have done in the housing arena with HUD has issues related to service animals. The definition here doesn't necessarily encompass the people who have a mental disability and have been working with a physician to have what they call a service animal. How does that factor into this whole discussion?

Cindy Feland No one has had that discussion with me. I guess as I am looking at the definition as a lawyer as to whether or not I could make it fit. The first thing I look at is that they refer to other animals. So clearly cats could potentially work under this section. It also says to do work for the benefit of an individual with a disability. It doesn't specify the disability so someone with mental health would potentially apply under here. This includes an animal trained to provide protection services, example pull a wheel chair, lend balance, retrieve objects. Then it has a phrase provide assistance in a medical instance. I don't know if in this case it could fall under that category, but I clearly think that with the way that this language is written, it is broad enough it has the ability to potentially look at some type of criminal charge for either injury or death resulting from injury to this animal.

Veronica Zietz, Executive Director at The Arc of Bismarck, testified in favor of the bill (see attached testimony #4).

Senator Lyson asked Cindy, Some of the injuries to these animals are going to be minor and may not even be an injury but still an attack, should that be a felony? Could you get a conviction?

Cindy Feland As far as the charges themselves, it doesn't have any effect at all on the degree of difficulty for a successful prosecution. You could use other sections such as animal cruelty statutes. There is also a judge who has a lot of lee way in sentencing recommendation. At the very minimum the judge can give something called a misdemeanor disposition. If he gives

anything under a year whether it is a suspended time or any jail to serve it automatically reverts to a misdemeanor, Secondly, court also has within its discretion the ability to give a deferred deposition of sentence. In which case, if the person does everything they are supposing to within the time period prescribed, it is completely removed from their record. I think it is good to have a very broad drafting of the law, because there are other safe guards and mechanisms built in.

Senator Nething closed the hearing on SB 2211.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2211

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 8018

Committee Clerk Signature

Minutes: **Senator Nething, Chairman**

Committee work

Senator asks to go over the amendments that were proposed and the new ones.

Senator Fiebiger recites the changes made in the amendments. His concern with what was in the bill seemed to be limiting what type of assistance a service animal could do. This amendment makes the language broader for those in the medical area.

Senator Fiebiger moves do pass on the amendment, Senator Schneider seconds

There is a verbal do pass on the amendment. All yes.

Senator Fiebiger motions for do pass on the amended bill, Senator Olafson seconds.

Vote 6 yes 0 no

Senator Fiebiger will carry

Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2211 Amendment

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☒ **Amended**

Motion Made By Seconded By

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		**Sen. Tom Fiebiger**	X	
Sen. Curtis Olafson – V. Chair.	X		**Sen. Carolyn Nelson**	X	
Sen. Stanley W. Lyson	X		**Sen. Mac Schneider**	X	

Total (Yes) 6 (N) 6

Absent

Floor Assignment

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

Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2211

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ **Do Pass** ☐ **Do Not Pass** ☒ **Amended**

Motion Made By Sen. Fiebiger Seconded By Sen Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		**Sen. Tom Fiebiger**	X	
Sen. Curtis Olafson – V. Chair.	X		**Sen. Carolyn Nelson**	X	
Sen. Stanley W. Lyson	X		**Sen. Mac Schneider**	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Fiebiger

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

amendments - verbal do pass

REPORT OF STANDING COMMITTEE

SB 2211: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2211 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike the colon

Page 1, line 16, replace "Service" with "service"

Page 1, line 17, replace the second "or" with an underscored comma and remove the overstrike over the overstruck comma

Page 1, line 18, after "~~pulling~~" insert "or provide assistance"

Page 1, line 19, after "provide" insert "assistance or"

Page 3, line 18, replace "A misdemeanor" with "C felony"

Page 3, line 22, replace "B" with "A"

Page 4, line 1, overstrike "physically"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2211

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2211

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10682, 10685, 10691

Committee Clerk Signature DPenrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2211.

Sen. Carolyn Nelson: Sponsor, support (attachment and attachment from David Green).

Chairman DeKrey: Thank you. We will recess the hearing. We will reopen the hearing. Further testimony in support.

Veronica Zietz, Executive Director, The Arc of Bismarck: Support (attachment).

Chairman DeKrey: Thank you. Further testimony in support.

Cynthia Feland, Assistant State's Attorney, Burleigh County: Support. We took a look at this bill in combination with SB 2210. We wanted to maintain consistency in penalties and so put the same changes in the penalties as are in SB 2210.

Rep. Koppelman: What is the penalty for doing any of these things to a regular dog, not a police or service animal.

Cynthia Feland: It is a Class A misdemeanor, and it is an issue that has come up and in fact, unfortunately, as an Association we looked at addressing that a little too late this year, and didn't have all the potential players that are involved in that particular section. We decided it would be wiser to, study this in the interim and make appropriate changes. ND really has some inadequate laws in this area, and we actually had the situation arise, where someone

had unjustifiably killed a dog in a rural area. They thought there should be a leash law, but there isn't at this time. I had to charge this under the cruelty to animals provision.

Rep. Koppelman: Need more teeth.

Cynthia Feland: Yes.

Rep. Boehning: With all these service animals that you mentioned, cats, dogs, birds, etc. how do we know who is a service animal. Is some kind of documentation provided to show to the apartment landlord or hotel owner.

Cynthia Feland: You're talking to the wrong person. I don't know. I haven't put this to the test because there haven't been any cases.

Rep. Vig: In the Agriculture committee, we looked at upgrading penalties for the Stockmen's Association for taking unbranded animals across state lines. But there's no cruelty involved in that.

Cynthia Feland: I know the Stockmen's Association for the last couple of sessions has been requesting stiffer penalties on various offenses. We had no problem with that, because all areas are separate. But again, unfortunately with the cruelty to animals, we need stiffer penalties as well. We want to study all aspects of this during the next interim.

Rep. Vig: Are you familiar with the penalties for other violations in the Agriculture Dept.

Cynthia Feland: The Stockmen's Association has a number of different penalties for branding issues, transporting, cattle rustling, hunting or cruelty to animals.

Rep. Boehning: How about a hotel owner, how would they be able to tell if an animal was a service animal. If the person is blind, that would be pretty obvious.

Cynthia Feland: Ms. Zietz may have a better answer to that. She works with that group. I am aware that they use other animals, but never had an occasion to get involved with animals other than in a service capacity. My understanding is that hotels either allow or deny pets in

hotel. Service pets would be different; I would probably have to have some type of verification that the animal was a service animal and whether or not the person needed the animal.

Rep. Koppelman: Under the current law, some of the language that is being eliminated in subsection 1, it talks about, it says the term does not include a dog that is not trained to mitigate an individual's disability but the presence of which is to provide for the comfort, protection and personal defense of the individual. That last sentence is being struck. Why is that being struck? Is it intended that anyone with a disability that has a dog would be included in this regardless of the disability.

Cynthia Feland: My understanding of what they were doing is, this only related to service or assistance dogs. So rather than define them separately as what was previously done, the intent here to have one definition that encompasses a service animal, which deals with both assistance definition and the service definitions were compiled into one definition. As to why they picked the exact language that they did, I can't answer. It is my understanding that was changed to make it more encompassing for the reality of the situation so that it's just not dogs that we're talking about.

Rep. Koppelman: So it could include pretty much any kind of animal for a disabled person as long as it provides some kind of assistance.

Cynthia Feland: Yes, and under the definition on page 1, the new language that is being added is all encompassing of various jobs that a service animal can assist with.

Rep. Koppelman: The language on page 3, section 6 appears to be the same as the previous bill, and the question we asked then about knowing if an animal is working, would be even more difficult to ascertain, because the animal is probably working 24/7. Was that incorporated in here.

Cynthia Feland: My understanding was that the directly took the language and mirrored it with SB 2210 and then broke the law into separate bills. Looking at it from the prosecution perspective, I'm going to have to be able to show a jury that this person had knowledge, or was clearly given information that this was a service animal. From that perspective I don't really see a problem with the way the statute is written. Unless you are going to have somebody who requires the service animal to wear a certain attire, I don't know how you are going to get around that.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Boehning: I have a question about the service animals.

Ms. Zietz: Often times the service animals are in a harness, wear a vest. We did have a situation in Fargo where someone needed a service animal and the building did not allow pets. We did have a doctor's note that the service animal was needed and presented that to the landlord.

Rep. Boehning: Can they get an identification card that shows that they have a service animal, how would that work.

Ms. Zietz: They usually have a special collar or wear vests that say service animal on them.

Amy Nelson, Fair Housing of ND: I wanted to answer Rep. Boehning's question. In a housing situation, I can't talk about hotels, but in a housing situation, if it is a no pet's building, the tenant has to come to the owner/manager/landlord and ask for reasonable accommodation for the animal to live on that property. As part of that process, the landlord wanted verification that the person is, in fact, disabled and needs the animal for the disability. Typically that's a doctor's note. I can't say for a hotel. I believe that typically in restaurants they wear vests or collars.

Rep. Boehning: Is there a way on their driver's license to put on there that they need a service animal. We can put on other restrictions, such as having to wear glasses.

Amy Nelson: That may be possible, but it's not required as far as I'm aware.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2211.

Rep. Hatlestad: I move a Do Pass.

Rep. Koppelman: Second.

10 YES 1 NO 2 ABSENT **DO PASS** **CARRIER: Rep. Wolf**

Date: 3/11/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2211

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # _____

Action: ☑ DP ☐ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Hatlestad Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin		
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 (No) 1 (Absent) 2

Floor Carrier: Rep. Wolf

☐ Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2211, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2211 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2211

Attachment 1
SB 2211

SB 2211
Senator Carolyn Nelson
District 21

The last time a bill concerning service animals was before this committee was 2001 and the bill was SB 2365. SB 2365 is with us today complete with his identification tag. The bill, SB 2365, dealt with training of service dogs. We've come a long way since then.

Back then we talked of assistance dogs – now other animals are also trained for special services, so this bill expands the definition.

Service animals are not just used for the visually impaired, they are trained for use with autistic children, people with multiple sclerosis, the elderly. Their use is ever expanding.

The only new section in this bill is Section 6, the penalty section. There is both a criminal penalty and a civil penalty. The penalties are the same as those that will be proposed in 2210. A service animal is expensive, it is a member of a family. There are others present who will give testimony on this bill .

I would like for you to hear from David Green. He is a constituent from District 21 who contacted me about a year ago. As some of you know, I am very willing to bring issues forward to the Legislature but I insist that the person requesting the bill be actively involved in its process through the Legislature.

Thank you.

Attachment 2
SB 2211

David C. Green
523 University Drive South
Fargo, North Dakota
58103-2647
Lurrik@Hotmail.com

Senate Bill No. 2211

Chairman and Senators,

Let me begin by providing some background on myself. I was born and raised in Southern California. I then served in the U.S. Navy aboard submarines as a sonar technician during the mid-80s. After my military service I worked at Naval Air Station North Island as a Department of Defense Police Officer. I was a trained traffic ascendant investigator and worked closely with local law enforcement agencies including the U.S. Border Patrol. I also served as the chief steward for the union local and was the lead negotiator for the labor contract while I was there. I was placed on a disability retirement in 1995. I then lived in Seattle for a year and a half before moving to Fargo to be closer and be able to help my parents.

I come before you today to address shot comings with the current laws protecting Service Animals for the Disabled. While most people are familiar with the Guide Dogs for the Blind, most do not realize the dollar value of these animals. The cost can be upwards of $38,000 to train the dog and provide instruction to the user (GuideDogsof America.org). But animals provide other service for the disabled, animals trained to alert for seizures or diabetic emergencies are other examples of what dogs can be trained for. Animals are also used for therapy for those with learning or other mental problems. This can include horses and even cats that possess the personalities traits for these roles.

A guide dog is a living extension of the person they guide, and an assault or threat against the animal is felt just as much by the person as if it had been done against them. The mental and emotional well being of an individual can be crippled if the therapy animals they have come to depend on are unjustly threatened. And as said as it may be, there are those in this world who would seek to harm another by threaten what they care about. What is sought here is to provide the recognition and protection for those animals that provide such valuable service to those that suffer from a variety of problems.

As stated about some of these service animals have a large dollar value, some more the then cost of the average used car. And the provide no less a valuable service then a vehicle to a family. Do they deserve any less protection under the law? The changes to the law give law enforcement and the courts the tools needed for this purpose, to protect these animals that fill such an import part of the lives of those less fortunate in our society.

Attachment 3
SB 2211

PROPOSED AMENDMENTS TO SENATE BILL NO. 2211

Page 3, line, 18, replace "A misdemeanor" with "C felony"

Page 3, line 22, replace "B misdemeanor" with "A misdemeanor"

Renumber accordingly

Attachment #4.

The Arc of Bismarck
1211 Park Avenue
Bismarck, ND 58504
Phone/Fax: 701-222-1854
arcbis@midconetwork.com
www.thearcofbismarck.org

Testimony of Support
Senate Bill No. 2211
January 27, 2009

Good morning Chairman Nething and members of the Judiciary Committee. My name is Veronica Zietz (#166); I am the Executive Director at The Arc of Bismarck and am here today representing The Arc of Bismarck and The Arc of Cass County.

I support Senate Bill No. 2211 because it would allow for enhanced protection of the rights of individuals with disabilities and the service animals which assist them in daily life. Service animals perform many helpful tasks including: guiding people who have visual impairments, alerting people who have hearing impairments, pulling wheelchairs, alerting and protecting a person who is prone to seizures, or performing other specialized tasks. Service animals preserve the rights and independence of the individuals they help and it is only right that they are given adequate protection of their own.

Sections one through five and seven provide amendments updating the language of the bill by changing the term "assistance dog" to "service animal." This change is right in line with federal law, outlined in the Americans with Disabilities Act. This language change is necessary because nontraditional animals are becoming more common place; for instance cats, monkeys, miniature horses, and birds are being used for guidance as well as many other assistive tasks.

This bill also brings about new legislation in section six. Current North Dakota law has a maximum conviction of a Class A misdemeanor for animal cruelty and a fine up to $2,000, for most indiscretions regardless of the severity. This new legislation would provide more strictly defined penalties for the abuse or death of service animals. This bill will create a change in the level of a fine issued for one of these crimes, which will work as a deterrence towards the abuse or killing of service animals. Please consider showing your support to many individuals with disabilities and the animals that help them by supporting SB2211.

Thank you for your time and attention.

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Carolyn Nelson
District 21
1 Second Street South #5-402
Fargo, ND 58103-1959
Residence: 701-235-5161
cnelson@nd.gov

Assistant Minority Leader

COMMITTEES:
Judiciary
Government and Veterans Affairs

SB 2211 – Wednesday, March 10 @ 9:00 in House Judiciary, Prairie Room

The last time a bill concerning service animals was before this committee was 2001 and the bill was SB 2365. That bill dealt with training for assistance dogs. We've come a long way since then.

The chapter we are updating is entitled "Blind and Disabled" – Chapter 25-13

Back then we talked of assistance dogs – now other animals are also trained for special services, so this bill expands the definition (section 1). Sections 2-5 then change the terminology.

Service animals are not just used for the visually impaired they are trained for use with autistic children, people with multiple sclerosis, the elderly. Their use is ever expanding.

The only new section in this bill is Section 6, the penalty section. There is both a criminal penalty and a civil penalty. The penalties are the same as those that will be proposed in 2210. A service animal is expensive, it is a member of a family.

I'd like to thank those who were co-sponsors of this bill and the friends of service animals who came in to promote this bill.

David C. Green
523 University Drive South
Fargo, North Dakota
58103-2647
Lurrik@Hotmail.com

Bill No. 2211

Chairman and Honorable Members of the House Judiciary Committee,

I regret on not being able to stand before you today to personally give you my presentation. I have asked Senator Carolyn C. Nelson to read this into the record on my behalf in support of this bill that I fill is desperately needed to correct a deficiency in the current law.

I come before you today to address short comings with the current laws protecting Service Animals for the Disabled. While most people are familiar with the Guide Dogs for the Blind, most do not realize the dollar value of these animals. The cost can be upwards of $38,000 to train the dog and provide instruction to the user (GuideDogsof America.org). But animals provide other service for the disabled, animals trained to alert for seizures or diabetic emergencies are other examples of what dogs can be trained for. Animals are also used for therapy for those with learning or other mental problems. This can include horses and even cats that possess the personalities traits for these roles.

A guide dog is a living extension of the person they guide, and an assault or threat against the animal is felt just as much by the person as if it had been done against them. The mental and emotional well being of an individual can be crippled if the therapy animals they have come to depend on are unjustly threatened. And as said as it may be, there are those in this world who would seek to harm another by threaten what they care about. What is sought here is to provide the recognition and protection for those animals that provide such valuable service to those that suffer from a variety of problems.

As stated about some of these service animals have a large dollar value, some more the then cost of the average used car. And the provide no less a valuable service then a vehicle to a family. Do they deserve any less protection under the law? The changes to the law give law enforcement and the courts the tools needed for this purpose, to protect these animals that fill such an import part of the lives of those less fortunate in our society.

The Arc of Bismarck
1211 Park Avenue
Bismarck, ND 58504
Phone/Fax: 701-222-1854
arcbis@midconetwork.com
www.thearcofbismarck.org

Testimony of Support
Senate Bill No. 2211
March 11, 2009

Good morning Chairman DeKrey and members of the Judiciary Committee. My name is Veronica Zietz (#166); I am the Executive Director at The Arc of Bismarck and am here today representing both The Arc of Bismarck and The Arc of Cass County.

I support Senate Bill No. 2211 because it would allow for enhanced protection of the rights of individuals with disabilities and the service animals which assist them in daily life. Service animals perform many helpful tasks including: guiding people who have visual impairments, alerting people who have hearing impairments, pulling wheelchairs, providing emotional therapy, alerting and protecting a person who is prone to seizures, or performing other specialized tasks. Service animals preserve the rights and independence of the individuals they help and it is only right that they are given adequate protection of their own.

Sections one through five and seven provide amendments updating the language of the bill by changing the term "assistance dog" to "service animal." This change is right in line with federal law, outlined in the Americans with Disabilities Act. This language change is necessary because nontraditional animals are becoming more common place; for instance cats, monkeys, miniature horses, and birds are being used for guidance as well as many other assistive tasks.

This bill also brings about new legislation in section six. Current North Dakota law has a maximum conviction of a Class A misdemeanor for animal cruelty and a fine up to $2,000, for most indiscretions regardless of the severity. This new legislation would provide more strictly defined penalties for the abuse or death of service animals. This bill will also create a change in the level of a fine issued for one of these crimes, which will work as a deterrence towards the abuse or killing of service animals. Please consider showing your support to many individuals with disabilities and the animals that serve them by supporting SB2211.

Thank you for your time and attention.

UNOFFICIAL PROPOSED AMENDMENT to SB 2211

Page 1, line 17, after "work" insert a comma, remove "or", remove the overstrike over the comma, and after "tasks," insert "or provide assistance"

Page 1, line 19, replace "protection" with "assistance" and after "disability," insert "provide protection services to an individual with a disability,"

Page 4, line 1, overstrike "physically"

UNOFFICIAL PROPOSED AMENDMENT to SB 2211

Page 1, line 17, after "work" insert a comma, remove "or", remove the overstrike over the comma, and after "tasks;" insert "or provide assistance"

Page 1, line 19, replace "protection" with "assistance" and after "disability," insert "provide protection services to an individual with a disability,"

Page 4, line 1, overstrike "physically"

Page 4, line 5, after "the" insert "essential functions of the"