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RE: HB5807, on service dog licenses

Illinois state legislators:

Psychiatric Service Dog Partners is a 501(c)(3) nonprofit that educates, advocates for, and supports people with respect to psychiatric service dogs. As longtime disability advocates, we are shocked at the language in HB5807 aimed to serve the business interests of a particular corporation under the guise and at the expense of disability rights. Beyond this, the bill is simply contrary at base and in detail to superseding federal law. We thus strongly urge you not to support HB5807.

First we'll cover the base problem. In case this is insufficient and to avoid future iterations in other forms, we'll then look at the details.

The base problem

The Americans with Disabilities Act (ADA) is federal law that establishes the baseline "floor" of rights, and its promulgating regulations apply to service animals in every state. Each state can grant more rights than the ADA, raising the "ceiling". However, states cannot crumble the floor to remove rights given by federal law.

HB5807 apparently directs Illinois' Department of Financial and Professional Regulation to establish a service dog license program under which service dogs would be licensed not merely as dogs, but as service dogs. Asking individuals with disabilities to comply with such a license program would fall, unsupportably, below the floor of rights guaranteed by ADA regulations. States cannot require service animal users to obtain a service animal license (bold added):

28 CFR §35.136 Service animals.

[...]

(h) Surcharges. **A public entity shall not ask or require an individual with a disability** to pay a surcharge, even if people accompanied by pets are required to pay fees, or **to comply with other requirements generally not applicable to people without pets.** If a public entity 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.¹

Even if states were permitted to institute such licensing programs, places of public accommodation cannot require service animal users to show a service animal license for access (see below, bold added). This renders the licensing program meaningless in everyday practice.

28 CFR §36.302 Modifications in policies, practices, or procedures.

[...]

(6) Inquiries. A public accommodation 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 public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. **A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.** Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an 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

¹ <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=2ab2aab2d3d2fd0f544a5ce7aad8f04c&rgn=div5&view=text&node=28:1.0.1.1.36&idno=28#28:1.0.1.1.36.2.32.7>

wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).²

These considerations should be sufficient to summarily shut down this bill. We only provide further, detailed commentary to avoid playing whack-a-mole with similarly ill-advised legislation in the future.

The details

In this section, we detail the many challenges facing this bill apart from the general licensing issue dealt with in the previous section. Quotations from the bill are from pages 11–12, and are under the qualifier on page 10 that “The Department shall adopt rules requiring that:”.

First, we must have an appropriate understanding of how service animal access is envisioned under federal law. Under ADA regulations, a service animal is a dog (or, exceptionally, a miniature horse) individually trained to provide assistance with a person’s disability. The regulations also lay out behavior standards for access in public. However, documentation of these aspects cannot be required for public access. Instead, when it’s not obvious the animal is a service animal, a business may at most ask the following two questions as a verification procedure:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

Additionally, if the dog is disruptive or destructive (barking, growling, eliminating, etc.), service dog or not, the business can force the dog to leave.

The provisions of HB5807’s licensing program begins with the following.

1 (1) the service dog respond to commands, which shall
2 include basic obedience and skilled tasks from the client
3 90% of the time on the first ask in all public and home
4 environments;

This seems like a reasonable requirement on first glance (we assume *at least* 90% command execution is intended), but there are issues with this provision. First, as a specification going beyond any in the ADA regulations, we interpret this as falling below the floor of rights established in federal law. Next, as there should be, there are different laws pertaining to the definitions and access of service animals in public and home environments. While one may understandably question whether this provision violates DOJ’s ADA regulations, the provision certainly runs afoul of Housing and Urban Development’s (HUD’s) Fair Housing Act (FHAct) guidance.³

Finally, this provision is patently and detrimentally limited by the current imaginings of the drafter. Guide dogs and other service dogs are trained for “intelligent disobedience”. If the blind handler instructs the dog to lead forward into moving traffic, we certainly hope the dog would not take the handler into traffic nine out of ten times. This is not to say that the language should be re-drafted. The lesson here is that these specifications are not in place (or allowed) at the federal level because of the inordinate difficulty in crafting such specifications while avoiding unintended discriminatory exclusions. These specifications are a complex internal matter requiring complex answers within the diverse community of service animal users and trainers, not a matter for a codified government bureaucracy.

5 (2) the service dog demonstrate basic obedience skills
6 by responding to voice and hand signals for sitting,
7 staying in place, lying down, walking in a controlled
8 position near the client, and coming to the client when
9 called;

This provision suffers from the same defects as the previous, with the exception of the FHAct issue. Also, it is almost as unimaginative and restrictive as the provision above, in a way that is surprising, given the disability-related context. Not everyone can use voice signals or hand signals, and beyond that, some prefer to train using

2 <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&n=28y1.0.1.1.37&r=PART#28:1.0.1.1.37.3.32.2>

3 https://www.animallaw.info/sites/default/files/FHEO_notice_assistance_animals2013.pdf

other signals (head nods or other body language, clicks or vibrations from training devices, etc.). A common theme among these provisions is missing the forest for the trees.

Service dogs are not obedience competition dogs. We certainly agree that service dogs should be exceptionally well-behaved and unobtrusive compared to pets, and this generally takes extensive, tailored training. However, if a dog of a certain physical disposition is uncomfortable sitting, yet can do its job perfectly by either lying or standing, there is no good reason to require that dog to be competition-trained for sitting. We find the kind of reasonable exceptionalism this example demonstrates to militate generally against a specific, presumably one-size-fits-all approach as found in this bill.

There is a major difference between having reasonable behavior standards—which already exist under ADA regulations—and instituting a heavy-handed system of verification procedures that erect barriers for those not comporting to a biased prototype.

10 (3) the service dog meet all the standards as laid out
11 in the Assistance Dogs International minimum standards for
12 assistance dogs in public and be equally well behaved in
13 the home;

See above for many of the problems associated with this provision. We will expand on issues particular to this provision.

Assistance Dogs International (ADI) is a relatively large business that apparently lobbies for their own business model to the exclusion and detriment of responsible people with disabilities who do not share ADI's narrow approach. The ADI standards do not work well for people with tiny service dogs, people who need a different walking position for their service dogs, and people who have any special circumstances that make it so they need unusual assistance from their service dog.

We do not support requiring ADI-based certification or meeting ADI's insular standards for service animals to have access. We do support the behavior standards that the ADA provides, which include that the animal be: not disruptive or destructive, housetrained, and on a leash except when required to be off leash for a disability-related work or task item.

How a service dog behaves at home is none of anyone's business, so long as the dog isn't disruptive or destructive of the living environment (e.g., barking in an apartment for extended periods of time). We do not support laws specifying how a service animal must behave inside a private residence.

14 (4) the service dog be trained to perform at least 3
15 tasks to mitigate the client's disability;

The requirement for three tasks is also of concern for us, as it touches on recurring negative themes.

This provision limits the disability-mitigating activity of a service dog to "tasks". The ADA regulations specifically say that service dogs can do work or perform tasks to mitigate the handler's disability. Tasks are intentional commands or requests of the dog. For example, asking the dog to fetch a bottle of water from the fridge is a task. Work includes disability-mitigating activity that the dog is trained to do on their own, by recognizing and responding to changes in the person or their environment. For example, a dog might alert a handler to an oncoming panic attack, or direct a blind handler around a novel obstacle. We see no good reason to eliminate disability-mitigating "work" here, nor do we see why a service dog should be required to perform tasks in addition to work.

Further, we find it quite strange that disability mitigation would be treated as a numbers game. In our view (and in concert with DOJ's floor of rights), if the dog is trained to perform at least one work or task item and the person's disability is thereby significantly mitigated, that is what's important. A diabetes alert dog that only alerts to blood sugar extremes can still be a regular lifesaver, and is not less of a service dog than one trained to fetch water, beer, and fruit juice.

Service dogs are not circus animals, beholden to learn a certain number of tricks to please outsiders. It is up to the service animal user how many—and very importantly, *which*—work or task items mitigate their disability, and we should not codify arbitrary government standards on this issue.

16 (5) the service dog's identification be accomplished
17 with a laminated identification card with a photograph or
18 photographs and names of the dog and client;

As we have made clear, asking service dog users to obtain such an ID is out of step with ADA regulations. Elsewhere in letters to Michigan legislators⁴ and to the purveyors of a (legally meaningless) service animal registry⁵, we detailed the harm IDs cause service animal users and operators of places of public accommodation—even if not required. We take a cursory glance at this topic below.

We do not support ID cards for service animals as a requirement for the disabled user to obtain goods and services that any other member of the public can obtain without an ID card. A service animal is a medical device, like a wheelchair. As with a service animal, a wheelchair can cause serious harm if used improperly—for example, an electric wheelchair could break someone’s foot or knock over someone with fragile bones. Yet (analogously), we do not believe wheelchair users should be required to carry or present IDs saying they can use their wheelchair inside.

As stated under 28 CFR §36.302, quoted in the initial section above, DOJ has specifically excluded the possibility of IDs for service animals. Additionally, any service animal user visiting from out of state would not have this ID, so ID-lacking visitors with service animals would not be able to enjoy free access to the public either.

19 (6) in public, the service dog wear a cape, harness,
20 backpack, or other similar piece of equipment or clothing
21 with a logo that is clear, easy to read, and identifiable
22 as assistance dogs;

While we do think it’s generally a good idea for service animals to wear gear identifying themselves as service dogs (or “assistance dogs” as ADI prefers yet many others do not), we do not think this should be required. There are many reasons a service dog might work without gear. For example, some dogs are uncomfortable in vests, or even allergic to materials in gear. These dogs should not be forced to wear something that is uncomfortable for them.

Additionally, in case of an emergency, there may not be time to gather the service animal’s gear, or the gear may break. This should not keep anyone from accessing goods and services with their assistive device. Finally, a vest with a logo on it even excludes many guide dogs, who often use an unmarked leather harness.

Of course, as with every other provision in this bill, this provision runs contrary to DOJ’s guidance:⁶

Q8. Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A. No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

23 (7) prior to placement, every service dog meet the
24 Assistance Dog International Standards and Ethics
25 regarding dogs, be spayed or neutered, and have current
26 vaccination certificates as determined by the dog's
1 veterinarian and applicable laws.

We have thoroughly explained why ADI’s (or any other organization’s) detailed standards should not be codified in law.

Finally, there are many research studies regarding the health effects of spaying and neutering. Increasingly, many people are leaving their service dogs intact to avoid certain types of cancer and growth abnormalities. For example, some believe that a dog being used for mobility work needs the hormones in their reproductive organs for their skeleton to develop properly—which is essential for a dog doing mobility work. Also, some responsible breeders require that their animals remain intact. For these reasons and more, even though we are not opposed to encouraging spaying and neutering generally, we cannot support mandatory spay/neuter for service animals.

4 <http://www.psychdogpartners.org/board-of-directors/board-activities/advocacy/michigan-joint-committee-meeting-comment>

5 <http://www.psychdogpartners.org/board-of-directors/board-activities/advocacy/service-dog-registry>

6 https://www.ada.gov/regs2010/service_animal_qa.html

Wrapping up

We disagree with every part of this proposed legislation, and find it wholly contrary to federal law and advocacy expertise.

If Illinois decides to issue future service animal bills, we recommend consulting superceding federal law and evaluating whether there is even any need or overall benefit to issuing this kind of law at the state level. The main benefit we see in laws at the state level regarding service animals are in providing for reasonable access for service animals in training, so that animals learning to be service dogs can do so in the environments within which they would work.

If the goal is to protect against “fake service dogs”, consider adding penalties for people who are fraudulently presenting themselves as using a service dog. For example, in California, someone who “fakes” a service dog is subject to a \$1000 fine and/or 6 months in jail. Punish the people who are doing the faking. Do not punish responsible service dog users by this proposed law to weed out a few fakers.

Thank you,

Veronica Morris

Veronica Morris, PhD
President of Psychiatric Service Dog Partners,
on behalf of the Board of Directors

vm/bwm



Psychiatric Service Dogs Partners' purpose is to promote the mental health of people using service dogs for psychiatric disabilities by educating, advocating, providing expertise, facilitating peer support, and promoting responsible service dog training and handling.