



# DISABILITIES LAW PROGRAM

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**To: John McNeal, Daniese McMullin-Powell, Pat Maichle, Wendy Strauss**

**From: Laura Waterland, Disabilities Law Program, CLASI**

**Date: 3/13/2018**

**Re: Proposed Bill to amend the Equal Accommodations statute, 6 Del. Code §§4502 and 4504.**

John asked the DLP to evaluate draft legislation which seeks to amend language in the Equal Accommodations statute related to service animals. Specifically, the bill : takes the definition for “support animal” out of the definition of disability in §4502 and places it in its own subsection in the §4502 ; substitutes the words “service animal” for “support animal”; adds clarifying language in the definition of “service animal” mirroring ADA language and making clear that service animals include those supporting people with psychiatric, intellectual or other mental disabilities, if the animals have been individually trained; and adds a subsection in § 4504 that an individual with a disability may be accompanied by a service animal in a place of public accommodation.

The proposed changes are improvements to the existing law for a number of reasons. First, “support animal” is a term that is not generally used in reference to animals that have been trained to assist individuals with disabilities. “Service animal” is used in the ADA and in most regulations related to such animals, and Delaware’s state law should accurately reflect that widespread practice. Second, it is very important that any ambiguity in the EA statute that individuals with psychiatric, intellectual or other mental disabilities are not protected by the law should be removed. <sup>1</sup> Third, it is useful to specifically state that individuals with service animals can take those animals to all public accommodations.

It would be helpful if an additional amendment could be made to §4501 so that the language is consistent with the rest of the statute by deleting the word “physical” as a qualifier to “disability,” as follows:

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any person because of race, age, marital status, creed, color, sex, *physical* disability, sexual orientation, gender identity or national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without regard to race, age, marital status, creed,

<sup>1</sup> There is a very strong argument that the current law covers individuals with mental disabilities and includes their use of service/support animals, as the definition of “disability” in §4502(7) includes any physical or mental impairment and the law requires reasonable accommodations of disability, which would include the use of service animals by people with disabilities. Nevertheless, clarifying language could only benefit enforcement of the law.

color, sex, *physical* disability, sexual orientation, gender identity or national origin, may be effectively safeguarded. Furthermore, in defining the scope or extent of any duty imposed by this chapter, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments may be considered

Councils should consider endorsing this bill, with the request that the above amendment be added.



SPONSOR:

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO EQUAL ACCOMMODATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4502 of Title 6 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 4502. Definitions.

4 As used in this chapter:

5 (7) "Disability" means a physical or mental impairment which substantially limits a person's major life  
6 activities, or being regarded as having such an impairment, but such terms do not include current, illegal use of a  
7 controlled substance as defined in § 102 of the Controlled Substance Act (21 U.S.C. § 802) or Chapter 47 of Title  
8 16, Uniform Controlled Substance Act. ~~Discrimination against a person with a disability includes discrimination~~  
9 ~~against the use of a support animal because of a physical disability of the user. Support animal means any animal~~  
10 ~~individually trained to do work or perform tasks to meet the requirements of a person with a physical disability,~~  
11 ~~including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or fetching dropped~~  
12 ~~items.~~

13 (14) A ~~place~~ "Place of public accommodation" means any establishment which caters to or offers goods  
14 or services or facilities to, or solicits patronage from, the general public. This definition includes state agencies,  
15 local government agencies, and state-funded agencies performing public functions. This definition ~~shall apply to~~  
16 includes hotels and motels catering to the transient public, but it ~~shall~~ does not apply to the sale or rental of houses,  
17 housing units, apartments, rooming houses or other dwellings, nor to tourist homes with less than 10 rental units  
18 catering to the transient public.

19 ( ) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of a  
20 person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

21 Section 2. Amend § 4504 of Title 6 of the Delaware Code by making deletions as shown by strike through and  
22 insertions as shown by underline as follows:

23 § 4504. Unlawful practices.

24 (a)(1) No person being the owner, lessee, proprietor, manager, director, supervisor, superintendent, agent  
25 or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to  
26 any person, on account of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity  
27 or national origin, any of the accommodation, facilities, advantages or privileges thereof.

28 (2) A place of public accommodation may provide reasonable accommodations based on gender identity  
29 in areas of facilities where disrobing is likely, such as locker rooms or other changing facilities, which reasonable  
30 accommodations may include a separate or private place for the use of persons whose gender-related identity,  
31 appearance or expression is different from their assigned sex at birth, provided that such reasonable  
32 accommodations are not inconsistent with the gender-related identity of such persons.

33 (3) An individual with a disability may be accompanied by a service animal in any place of public  
34 accommodation. For the purpose of training ~~support~~ service animals to be used by persons with disabilities, all  
35 trainers and their ~~support~~ service animals shall be included within those covered by this subsection.

#### SYNOPSIS

This Act brings Delaware's equal accommodation law into compliance with the federal Americans with Disabilities Act ("ADA") and by doing so, clarifies when an individual with a disability, including a veteran with Post-Traumatic Stress Disorder, may be accompanied by a service animal in a public place. Specifically, this Act does all of the following:

1. Replaces the term "support animal" with "service animal" to use the same term as the ADA.
2. Includes assistance with nonphysical disabilities in the definition of service animal, consistent with the ADA.
3. Moves the requirement that a service animal be permitted to accompany an individual with a disability in public places from the definition of disability to the statute that lists unlawful practices.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.