



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
Margaret M. O'Neill Bldg., Third Floor, Suite 1  
410 Federal Street  
Dover, Delaware 19901  
302-739-3621


The Honorable John Carney,  
Governor

John McNeal, Director  
SCPD

**MEMORANDUM**

DATE: March 22, 2024

TO: Sen. Dave G. Lawson

FROM: Benjamin Shrader, Chairperson   
State Council for Persons with Disabilities

RE: Senate Bill 219 An Act to Amend Title 6 and Title 25 of the Delaware Code  
Relating to the Misrepresentation of Service Animals and Assistance Animals  
(March 1, 2024)

The State Council for Persons with Disabilities (SCPD) has reviewed Senate Bill 219 to amend the Delaware code relating to service animals and have the following comments and observations:

- There is significant confusion in the U.S. over the requirements for assistance animals, due in part to several different laws enabling assistance animals to enter spaces where they may otherwise be excluded, and the requirements are different for each law. As such, SB 219 could have the impact of criminalizing well-intentioned people who do not understand the difference.
- The federal laws that most commonly apply to assistance animals include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, the Fair Housing Act (FHA), and the Air Carrier Act. Each of these laws have different terminology and different requirements, which causes confusion to the public and can contribute to a perception of fraud.
- ADA allows service dogs (or sometimes miniature horses) who are individually trained to perform a task for an individual with a disability to access certain locations pets normally cannot go. The ADA applies to businesses that are open to the public, government services and employment.

- FHA allows for both service animals and support animals (not limited to dogs), including emotional support animals; emotional support animals are animals who are not trained to perform tasks but rather provide therapeutic benefit and support. FHA applies in the housing context.
- Even some individuals with disabilities do not understand the difference between the two and mistakenly believe that emotional support animals can go to businesses like restaurants, with no intent to mislead. Thus, an individual with a disability may intentionally fit an emotional support dog with a vest, not realizing that the emotional support dog is only allowed in housing, rather than at businesses.
- Further, the definition of disability itself is broad and disability is not always visible. Individuals with unobservable disabilities or disabilities that others do not judge to be significant may be wrongly accused under this bill.
- Another concern with this bill is that it could cause intrusion into the personal information of people with disabilities who must defend themselves from claims of misrepresentation. Under the ADA and FHA, individuals are only allowed to ask limited questions, so as to prevent discrimination against people with disabilities and intrusion into their privacy. For example, under the ADA they are only permitted to ask two questions:
  - Is that a service animal that you need due to a disability?
  - What task is it trained to perform?

Under FHA, the inquiry is limited primarily to:

- seeking information that reasonably supports that a person has a disability (if not observable),
- information that reasonably support that the animal does work/performs tasks, provides assistance, and/or provides therapeutic emotional support; and that the animal is commonly kept in households (except rare circumstances)
- Fraudulent assistance animals are unethical and do cause problems for people with disabilities. However, the language used in this bill, “intentionally” “misrepresents,” is very subjective and could actually further discriminate and isolate individuals with disabilities who may fear being accused of assistance animal fraud, and thus forgo the needed assistance, or avoid venturing out into the community.
- While a number of states have these laws<sup>1</sup>, a better use of Delaware’s time and energy would be focusing on public education about service and assistance animals, what the

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<sup>1</sup> See e.g., for a discussion of two different states and their approaches to this issue: <https://www.understandingtheadada.com/blog/2018/08/06/washington-hawaii-approaches-misrepresentation-of-service-dogs/>. Hawaii uses a “clear and convincing” evidence standard. Note: there is no heightened standard in SB 219.

requirements are, which kinds can go where, and when animals can be excluded (such as out of control dogs).

**The SCPD opposes this bill for the above reasons as we believe it may further discriminate against people with invisible disabilities, could compromise the privacy protections of the ADA and FHA, and could hinder efforts of community integration and involvement.**

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Marissa Band, Esquire CLASI, DLP  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council