



March 18, 2016

DISABILITY LAW COLORADO'S POSITION STATEMENT ON HB16-1308

Who is Disability Law Colorado?

Disability Law Colorado is a Colorado nonprofit organization established to protect and promote the legal and human rights of persons with disabilities. It serves as the federally-mandated and state-designated Protection and Advocacy System for people disabilities as authorized by the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. §15043, *et. seq.*), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. §10801, *et. seq.*), and the Protection and Advocacy for Individuals Rights section of the Rehabilitation Act (29 U.S.C. §794e, *et. seq.*). Since Disability Law Colorado was founded in 1976, it has represented nearly 20,000 individuals with disabilities and has assisted more than 65,000 individuals with disabilities in advocating for themselves. Attached, please find some relevant information about our organization.

Concerns with HB16-1308

We are writing to express our concerns with HB16-1308. While we commend the effort HB16-1308 has made to try and curb the abuses that people who claim to have service animals, but really do not, wreak on the system, we are concerned there would be significant unintended negative consequences for members of the public, including people with disabilities. Though we are not aware of any stakeholder meetings that were held, we are bringing our concerns to you now in the hope that there may be a compromise to be had that would allow us to support this bill because as it now stands, we are not able to support HB16-1308.

Important Definitions

First, it is important to differentiate the different types of animals that a person may have:

Service Animal - This is defined by federal and Colorado law as a dog (or miniature horse) that has been *individually trained to perform a specific task or service for a person with a disability*. A service animal is considered an extension of a person with a disability and is allowed in any place that is open to the public. A service dog can only be excluded from a business or public place if it is acting aggressively or causing a nuisance.

Companion or Assistance Animal – Companion and assistance animals are a product of federal and state laws regarding fair housing and are defined as animals that *help a person with a disability alleviate one or more symptoms of their disability while in their home*. This can include a dog that barks when the doorbell rings to assist a person who has a hearing impairment or a cat that provides a person with bipolar disorder a reason to get up in the morning, take her medicine and go to work. Only people with disabilities are entitled to have companion animals and even then, companion animals are only allowed in a person's home. Business owners and other places of public accommodation are not required to allow companion or assistance animals into their businesses.

Therapy Animals – Therapy animals are those animals that are taken to hospitals, schools and other facilities to provide therapy to the people there. For example, a therapy dog may visit patients at a children's hospital. Though well-behaved, therapy animals are not service animals and are not required to be allowed into places of public accommodation. The major difference with therapy animals is that their owners do not have disabilities. Instead, therapy animals typically visit people with disabilities.

Pets – This is the final catch-all provision that includes all animals that any person, with or without a disability, may have if they do not fall into one of the other categories.

Unfortunately, there are many, many people who do not understand the legal differences between these types of animals and the benefits that they confer. The result can be that a person with a disability legitimately gets a companion or assistance animal to help alleviate some symptoms of their disability, but they misunderstand the law, and mistakenly believe that they can take that animal into public businesses.

Example

There was a woman, Doris, whose husband of 40 years passed away. Doris had long struggled with depression and her symptoms worsened significantly after her husband's death. Doris was not leaving the house or taking care of herself, so her family decided to get her a small poodle. Doris loved her new little dog, whom she named Toodles. Doris' family saw immediate changes in her. Doris started looking forward to her daily walks with Toodles and especially enjoyed taking him to the dog park. This meant that Doris was anxious to get up every day, get dressed, take her daily medications and then take Toodles to the park. Doris' family was amazed by the improvement of her depression symptoms and fully attributed them to Toodles.

Under the law, in this scenario Doris is allowed to have Toodles in her home, even though her landlord does not allow pets. This is because Doris: 1) has a disability (depression) and 2) Toodles helps alleviate some of the symptoms of her disability. This means Toodles is a companion animal. However, Toodles has not been *trained* to perform a task for Doris. This means that Toodles is not a service dog and is not allowed in businesses and public places.

Here is where the confusion comes in – Doris talks to her new friends at the dog park and they tell her that since Toodles is such a big help to her, she should order him a vest and a certificate on-line so that he can be declared a service animal and she can take him with her wherever she goes. Though skeptical, Doris is very excited by this idea, and checks the information on-line. In what has become far too common, Doris easily finds several websites offering “Service Animal” vests and certifications and she buys one for Toodles. Doris knows that Toodles is a “companion animal”, not a service animal, but she does not realize that the two are legally different and the websites do not help her understand the nuances. Soon thereafter, she happily takes Toodles – donned in his orange “Service Animal” vest – to the grocery store and library and wherever she needs to go throughout the day. Thus, unwittingly, Doris is violating the law because she is knowingly bringing her companion animal into places where only service animals are allowed.

The Root of the Problem? Lack of Education on the Law

This is a problem and we at Disability Law Colorado fully recognize and believe there needs to be education on the law – for both business owners and members of the public with disabilities who may want or have a service or companion/assistance animal. We have made information sheets and provided many trainings for landlords, tenants, students, and other members of the community on this issue; in fact, the section of our website that gets the most traffic is our page on assistance and service animals. We know this is a serious issue and we fully support efforts to curb abuses of the law; however, we just do not think HB16-1308 in its current form is the right solution.

Serious, Unintended Consequences of HB16-1038

HB16-1308 provides a serious consequence for Doris and others like her. A criminal conviction for fraudulent misrepresentation can prevent a person from getting a job, getting housing or even accessing public benefits and services. Thus, in our example, if Doris was caught at the grocery store with Toodles – who she knows is a companion animal and not a service animal - she could end up with a criminal conviction, a hefty fine and the potential that she could lose her current housing or be unable to secure a job if she wanted to re-enter the workforce.

While this example may sound extreme, we urge you to consider the realistic consequences that a conviction of *fraudulent misrepresentation* could have on a person.

- A law graduate may not be accepted into the bar with such a conviction;
- a low-income housing provider may not agree to rent to someone with a fraudulent misrepresentation conviction; and
- an aspiring stock broker could be denied his Series 7 license because he has been convicted of fraudulent misrepresentation.

Suggestions for HB16-1308

Again, we understand that there is a real problem, however we urge that the following be considered:

- An amendment to the bill to require that a first offense results in a *written warning*, rather than a conviction. This would ensure that before anyone faces the serious consequences that accompany a fraudulent misrepresentation conviction, it is clear that the person knew the intricacies of the law; and
- A provision to provide education on the rights and responsibilities for owners of service and companion animals.

We are concerned that given the confusion that currently surrounds the law on service versus assistance/companion animals, HB16-1308 could result in numerous convictions for people that have previously had no criminal record and really just needed to better understand the law.

For these reasons, we cannot support HB16-1038 in its current form and ask that you either add amendments to address these issues or vote no on the bill.

Please feel free to contact us to discuss this issue.

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