

Memorandum in Support

NYSBA #2

March 4, 2015

A. 876-A
S. 1314-A

By: M. of A. Benedetto
By: Senator Marcellino
Assembly Committee: Governmental Operations
Senate Committee: Rules
Effective Date: Immediately

AN ACT to amend the executive law and the civil rights law, in relation to service animals, guide dogs, hearing dogs or service dogs; and to repeal certain provisions of the executive law relating thereto

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association supports A.876-A/S.1314-A, a chapter amendment to Chapter 536 of the Laws of 2014 concerning the use of service animals by individuals with disabilities. The new legislation reflects the purpose of bringing New York State law into compliance with the Americans with Disabilities Act (ADA). Reading Chapter 536 and the chapter amendment together, they accomplish the following:

(1) eliminates language from the definitional section of the State Human Rights Law (SHRL) (Exec. Law sec. 292) that virtually defined guide, hearing, and service dogs out of existence since no dog could meet the stated criteria¹; the primary State law definitions of guide hearing, and service dogs will be returned to Section 47-b of the State Civil Rights Law (SCRL). The definitions will simply and clearly provide that a guide, hearing and service dog under New York law is a dog that is under the control of the person using or training it and that has been or is being trained to guide or otherwise to aid a person with a disability. Thus, the law will provide clear and unambiguous protections to people with disabilities who use service animals and those who train such animals.

¹ In sum, Executive Law sections 292 (31), (32) and (33) previously required that a service animal be professionally trained by a “recognized” training center, but New York does not license or recognize any such trainers or entities. Moreover, as discussed in note 2, the ADA does not impose any such recognized or formal training requirements for service animals.

(2) amends section 47-b of the SCRL so as to relocate the word “qualified” in reference to a trainer from a more general definitional section to one focused solely on the use of a guide, hearing, or service dog in an employment context. As was always the case, the word “qualified” will have to be read and interpreted consistently with the ADA.

(3) adds to Exec. Law Sec. 296(14) a provision which prohibits discrimination against a person with a dog trained by a “professional” guide, hearing or service dog training center or by a “professional” trainer of such dogs. This prohibition is “in addition to” other requirements calling for reasonable modifications in policies, practices, or procedures to permit the use of a service animal by a person with a disability consistent with the ADA, including the use of an animal as a reasonable accommodation. Since federal law preempts efforts to require “professional” trainers and prohibits any inquiry into the training of the trainer, the effect of the new provision will be to enable one using a guide, hearing, or service dog to offer – voluntarily – proof as to the “professional” training of their dog which, if proven to and accepted by the State Division of Human Rights (SDHR), may give a complainant an extra cause of action against a respondent.²

Read in conjunction with Chapter 536 of the Laws of 2014, the chapter amendment accomplishes the goal of bringing New York law into compliance with the ADA. Because this serves the ultimate goal of bringing greater clarity to the law, the New York State Bar Association **SUPPORTS** this legislation.

² No State law can reduce the rights of people with disabilities below those rights recognized in the ADA. Where “[t]he ADA provides greater protection for individuals with disabilities ... it takes priority over local or state laws or regulations” that provide lesser protections. “*Commonly Asked Questions about Service Animals in Places of Business*” and accompanying letter from United States Department of Justice, Civil Rights Division, and National Association of Attorneys General (including New York’s), available at <http://www.ada.gov/archive/animal.htm>. ADA regulations, in themselves and in their regulatory history, make clear that no specialized training may be required for the trainer of a service animal (see Justice Department “*Section-by-Section Analysis and Response to Public Comments*” regarding amendments to ADA regulations 75 F.R. 56163, et seq. (September 15, 2010); 75 F.R. 56236 et seq. (September 15, 2010); 28 C.F.R. § 36.302(c)(6), available at http://www.ada.gov/regs2010/titleIII_2010/reg3_2010.html, stating “Certain commenters recommended the adoption of formal training requirements for service animals. The Department has rejected this approach and will not impose any type of formal training requirements or certification process, but will continue to require that service animals be individually trained to do work or perform tasks for the benefit of an individual with a disability....A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.” The regulations also make clear that it is unlawful to make any inquiry about the training of the dog except (where it is not obvious) to inquire as to a task the dog has been trained to perform for the person with the disability (28 CFR 36.302(c)(6)).