

2015 HOUSE HUMAN SERVICES

HCR 3010

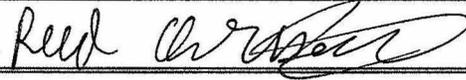
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HCR 3010
2/9/2015
23444

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to shall consider studying the identification of properly trained assistance animals providing legitimate service to their owners, waivers of local registration fees, and the effect of various local ordinances on the acquisition and use of assistance animals.

Minutes:

Testimony #1

Chairman Weisz opened the bill on HB 3010.

Rep. Lisa Meier: Representative District 2 introduced and supported the bill. (See Testimony #1)

Chairman Weisz: For an apartment or rental, is your intent to get a \$100 per month assistance animal waiver?

Rep. Meier: The intent is to look at all the aspects. That is why we put a study resolution together.

Sandra Decker: Brought HCR 3010 to Rep. Meier. She described a case where landlords are requiring paper work from a doctor. The doctor will have to testify in court on their own dime. According to the Handicap act of 1972, a landlord cannot charge a deposit or any rent for a service / therapy animal. Cities are banning anything all sorts of dogs including pit bulls.

Rep. Keifert: The breed of dogs that can be used for assistance, it doesn't have to be a pit bull.

Decker: Dogs are trained to be vicious and not born that way. Pit bulls won the 2011 dog of the year award.

Rep. Keifert: Originally bred as a fighting dog and people are scared of them. Don't you think they could stay away from that breed for service animals?

Decker: If they are trained to not be aggressive, they should be able to use pit bulls as a service dog. If we don't try to save these "aggressive" breeds, they will be euthanized.

Rocky Gordon: This is one of the most frustrating issues we have we service and companion animals and complying with the law. Ask you expand this to all service animals and not just dogs. The other issue is the companion animals versus service animals. "Companion animals are considered service animals". If you could look at this it would be appreciated.

Rep. Rich Becker: Can you give us examples of the problems?

Gordon: Other residents are afraid is one example. Damages can occur from the animals in some instances... The lines are blurred of what is a service or companion animal.

Rep. Mooney: Aren't service dogs required to wear a vest for identity.

Gordon: Yes, but the Labor Department says that service dogs and companion dogs are all the same.

Chairman Weisz: That's your reference to companion animals. How does an apartment owner decide if it's a true companion animal or a pet?

Gordon: The current law only accommodates to a disability. So if we get a request, we send the doctor a verification to approve the patient.

Rep. Mike Schatz from New England: testified in support of the bill.

NO OPPOSITION

Chairman Weisz: closed the hearing on HCR 3010.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HCR 3010
2/10/2015
23561

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Concurrent Resolution directing the Legislative Management to consider studying the identification of properly trained assistance animals providing legitimate service to their owners, waivers of local registration fees, and the effect of various local ordinances on the acquisition and use of assistance animals.

Minutes:

Chairman Weisz: opened the bill on HCR 3010. Some of the changes include changing "dogs" to "animals". Are there any other proposed changes?

Rep. Mooney: Could we change "to study" to "shall consider study", is that problematic?

Chairman Weisz: Well, probably. I think we do want to say "shall consider"

Rep. Rich Becker: This Legislative Management, when a study is proposed and accepted, who does all the work?

Chairman Weisz: Legislative Management is basically the Legislative Council, they pick the studies & build an interim committee in most cases. Then the funds are assigned, and basically make up their budget. That is why you say "shall consider".

Rep. Mooney: Moves for an amendment to change "to study" to "shall consider" and then "dog" to "animal throughout the document.

Rep. Fehr: Seconds the Motion.

Voice Vote: Motion passes.

Rep. Fehr: Moves for a Do Pass as Amended HCR 3010

Rep. Seibel: Seconds the Motion

Roll Call Vote: 12 Yes, 1 No, 0 Absent

House Human Services Committee
HCR 3010
2/10/2015
Page 2

Do Pass as Amended Carries and placed on the Consent Calendar.

Rep Seibel will carry the Bill

8/6
3/10/15

February 10, 2015

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3010

- Page 1, line 2, replace "dogs" with "animals"
 - Page 1, line 4, replace "dogs" with "animals"
 - Page 1, line 5, replace "dogs" with "animals"
 - Page 1, line 7, replace "dogs" with "animals"
 - Page 1, line 10, replace "dogs" with "animals"
 - Page 1, line 12, replace the first "dogs" with "animals"
 - Page 1, line 12, replace the second "dogs" with "animals"
 - Page 1, line 13, replace "dogs" with "animals"
 - Page 1, line 14, replace "dogs" with "animals"
 - Page 1, line 15, replace "dog" with "animal"
 - Page 1, line 18, replace "dogs" with "animals"
 - Page 1, line 20, replace "dogs" with "animals"
 - Page 1, line 21, replace "dogs" with "animals"
 - Page 1, line 22, replace "dogs" with "animals"
 - Page 1, line 23, replace "dogs" with "animals"
- Renumber accordingly

Date: 2-10-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3010

House Human Services Committee

Subcommittee

Amendment LC# or Description: See below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Mooney Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Mooney		
Vice-Chair Hofstad			Rep. Muscha		
Rep. Bert Anderson			Rep. Oversen		
Rep. Dick Anderson					
Rep. Rich S. Becker					
Rep. Damschen					
Rep. Fehr					
Rep. Kiefert					
Rep. Porter					
Rep. Seibel					

Motion Pass

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
*change to animals from dogs
put in "shall consider studying"*

Date: 2-10-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3010

House Human Services Committee

Subcommittee

Amendment LC# or Description: 15.3046.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Fehr Seconded By Rep. Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker		✓			
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep. Seibel

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3010: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HCR 3010 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "dogs" with "animals"

Page 1, line 4, replace "dogs" with "animals"

Page 1, line 5, replace "dogs" with "animals"

Page 1, line 7, replace "dogs" with "animals"

Page 1, line 10, replace "dogs" with "animals"

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Page 1, line 21, replace "dogs" with "animals"

Page 1, line 22, replace "dogs" with "animals"

Page 1, line 23, replace "dogs" with "animals"

Renumber accordingly

2015 SENATE HUMAN SERVICES

HCR 3010

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HCR 3010
3/30/2015
25572

- Subcommittee
 Conference Committee

Committee Clerk Signature *Donald Mueller* *Mary Jo*

Explanation or reason for introduction of bill/resolution:

A concurrent resolution to study the identification of properly trained assistance animals providing legitimate service to their owners, waivers of local registration fees, and the effect of various local ordinances on the acquisition and use of assistance animals.

Minutes:

Attach #1: Testimony by Rep. Lisa Meier
Attach #2: Copy of HB 1191, HB 1192
Attach #3: Service Animals, Assistance Animals and Housing

Representative Lisa Meier, District 32, introduced HCR 3010 to the Senate Human Services Committee (attach #1) (2:30)

Senator Warner commented that he went to Orlando over crossover. There was a caged dog on the plane. His daughter thought she needed cat as therapeutic. Is this some of the issue that we're dealing with here? If people who are pushing the boundary of what's acceptable service animal or what the need for service animals is?

Rep. Meier hopes the study will look at this as well. Initially when I started to look at this whole process it was actually initially was brought to her from a citizen in Bismarck. The issue actually works both ways. There might be apartment owners who do not want a pet - what is their rights? The study would look at all of this.

V. Chairman Oley Larsen what is the process for permitting service animals now?

Rep. Meier I guess I doesn't know the process. I am not aware of what the process is.

Senator Axness I doesn't know if there is licensing of service animals.

Chairman Judy Lee There is a big difference between a true service animal like one of the highly trained very expensive guard dogs. Senator Anderson may have already shared this you. We've had two bills from Political Subs committee talking about this. It is being terribly abused in some situations. A big difference between a highly trained service- dog which is therapeutic, no that is a service animal, versus a therapeutic animal, such as a ferret. The question is a of peer support group in requiring a therapeutic animal. There is a conflict

between the rights of the tenants, the rights of the landlords to say it's a no pets building, and fair housing which says that somebody can have a therapeutic animal which is different from a service animal. I've got no problem with the service animal part, but these other two bills which the committee will take a look at so you can see what else is going on here. They are trying to have some kind of balance within the federal law to have co-existence. (attach #2 is the HB 1191, HB 1192)

Rep. Meier indicated that is why it is good to do the study to look into this. Initially, the individuals wanted to bring in bills to direct and I said you know we really haven't ever studied it in the state of North Dakota.

Chairman Judy Lee asked if she had a lot of calls.

Rep. Meier indicated a couple.

OPPOSITION TO HCR 3010

No opposing testimony

NEUTRAL TO HCR 3010

No neutral testimony

Chairman Judy Lee closed public hearing

Senator Warner asked if the other two bills have been acted on in Political Subs, and how they were disposed, you might think what we do with them. It could be a good disposition.

Chairman Judy Lee will check.

Senator Howard Anderson, Jr. In political subs, people discussed saying they need documentation if not service animal, but if therapeutic, need additional documentation. Property owners seemed okay with this and if somebody wanted to refer to the Fair Housing Act why then they could certainly bring that into play.

Chairman Judy Lee on HB 1191, .2000 version, it was amended to include the language that says, a landlord may not require supporting documentation from a tenant, when the tenants disability or disability related need for a service animal or assistance animal is readily apparent or already known to the landlord. So that was added and it sounded like that was acceptable to the folks who were explaining to us from Protection and Advocacy about the Fair Housing Act as well as the ADA. So it has been sent out with a do pass as amended recommendation.

Chairman Judy Lee reviewed HB 1192 - Chairman Judy Lee read from the bill. This bill has also been through the system. This bill deals with deposits for pets.

V. Chairman Oley Larsen if you heard this in political subs, can he get information on how and what you have to do to get a therapeutic animal. Does anybody know that?

Senator Howard Anderson, Jr. when you look at federal fair housing law, it is broad. All you need to have a service animal is a need. If you don't have a need, you need documentation, which may be a peer group, or from someone who can state you need this. It is a fairly low bar to get this. This is where the study resolution comes from too, making it easier for people renting an apartment, person has allergies, to have protection for them also. If someone says you need it, you get it.

V. Chairman Oley Larsen a service animal is a dog that barks when someone comes to the door, for the blind. A therapeutic animal is for therapy. Are there different guidelines for a therapeutic animal? He understands how a service animal is needed. Service dog is much different than a therapeutic animal.

Chairman Judy Lee offered copies of this Legislative Council report on service animals, assistance animals, and housing?

Senator Dever we had provided funding for 3 service dogs for veterans. He attended VFW meeting. Person had wonderful idea and it wouldn't even cost very much money. How about we set up a program where veterans could set up and help animals in shelters and it would be therapeutic value to that. I said that is a wonderful idea. It is such a great idea it would not require any government involvement to make it happen. Everything needs to go through the government. I think with this kind of situation to, that it's appropriate that they have the animal, but sometimes people will want it because it is their pet.

Chairman Judy Lee there has been serious abuse of people wanting pets and then calling it therapeutic. She offered further documentation from 1041/1042.

Senator Dever described someone having a pet rat and they had to find an apartment owner that would accept that, and they did, but I think most people would have trouble with an argument that, that said it was therapeutic.

Chairman Judy Lee I had a complaint from someone who wanted to rent and wanted a critter with her. In some cases, you can't ask for additional compensation as its considered reasonable accommodation. The example she gave had involvement in the regional human service center. She did contact Department of Human Services and asked for criteria - is there a permit, or a consent form, an authorization form that says somebody is entitled to a therapeutic animal. It turns out that there is such a thing, and she would not provide for her. There was a requirement on the part of the property manager, for any request for a therapeutic animal and they needed to have an authorization from a professional and frankly I don't have a problem with that kind of thing. If it's really legit then you deal with it. But if it's not then maybe you'll have to figure how you're going to get along without your pet. We'll set this aside, but it doesn't mean that the resolution isn't worthy of consideration but I thought this additional information might be helpful to you.

Chairman Judy Lee provided copy of Service Animals, Assistance Animals, and Housing document (attach #3)

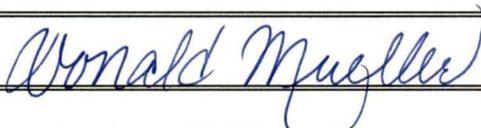
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HCR 3010
3/31/2015
25669

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution to study the identification of properly trained assistance animals providing legitimate service to their owners, waivers of local registration fees, and the effect of various local ordinances on the acquisition and use of assistance animals.

Minutes:

No attachments

The Senate Human Services Committee met on March 31, 2015 for HCR 3010 in committee work.

Chairman Judy Lee recapped, discussed prior handouts from other related bills.

V. Chairman Oley Larsen stated we just passed the HB 1192 and HB 1191 on the floor, so he doesn't see any reason to support the study since the other two bills passed.

Chairman Judy Lee indicated Representative Meier used interchangeably service dog and assistance animal, and they are not the same. Representative Meier's seems more in a line of being concerned about laws being passed banning citizens from owning any particular breed of dog, and that there wasn't any due process for that. We have two other bills that deal with this that deal with housing, and the amendment that was done with one of those was done in compliance with the requirements of fair housing because Corrine Moore from Protection and Advocacy provided input to that in that committee.

V. Chairman Oley Larsen moved the Senate Human Services Committee DO NOT PASS HCR 3010. There was no second to the motion, so the motion dies for a lack of a second.

V. Chairman Oley Larsen moved the Senate Human Services Committee DO PASS HCR 3010. The motion was seconded by **Senator Dever**.

Discussion

Senator Dever indicated he is not sure it is necessary - legislative management will need 4 extra hours to determine which bills to study, and this probably won't run to the top.

Senate Human Services Committee

HCR 3010

03/31/2015

Page 2

Roll Call Vote to DO PASS

3 Yes, 3 No, 0 Absent. Motion fails.

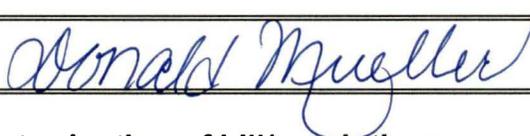
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HCR 3010
4/1/2015
25677

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution to study the identification of properly trained assistance animals providing legitimate service to their owners, waivers of local registration fees, and the effect of various local ordinances on the acquisition and use of assistance animals.

Minutes:

No attachments

The Senate Human Services Committee met on April 1, 2015 for HCR 3010 in committee work.

Chairman Judy Lee reviewed the votes. The vote was left open for Senator Axness.

Final Roll Call Vote

3 Yes, 3 No, 0 Absent. Motion fails.

Senator Warner moved the Senate Human Services Committee DO NOT PASS HCR 3010. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll Call Vote

5 Yes, 1 No, 0 Absent. Motion passes.

Senator Warner will carry HCR 3010 to the floor.

Date: 03/31 2015
Roll Call Vote #: 1

25669

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3010

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Larsen Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)		✓	Senator Tyler Axness		✓
Senator Oley Larsen (V-Chair)		✓	Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

25677

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HCR 3010**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Warner Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever		✓			

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3010, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)
recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HCR 3010 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HCR 3010

#1
2/9/15

HCR 3010

Good Morning Mr. Chairman and Committee Members.

For the record I am Rep. Lisa Meier of District 32 in Bismarck.

The reason that this study is before you this morning is because of individuals in ND have expressed concerns over this matter.

Currently in North Dakota, any city or county can pass laws arbitrarily banning citizens from owning any breed of pet dog.

Many of those local ordinances passed lack due process protections. Some even violate the service dog provision of the Americans with Disabilities Act. (ADA).

19 states have passed legislation that protect property rights by prohibiting breed-discriminatory or specific ordinances.

This bill's goals are the protection of property rights and the enhancement of community safety in the most effective and most thorough way possible. Because everyone benefits from a safe society-both people and pets.

In ND we really have not looked into these issues before therefore I thought a study was a great start and ask this committee's favorable recommendation.

Thank you Mr. Chairman.

(1)

HCR 3010

Attain#
HCR 3010
03/30/2015
J# 25572

Good Morning Madame Chairwomen and members of the Senate Human Services Committee.

For the record I am Rep. Lisa Meier of District 32 in Bismarck.

The reason that this study is before you this morning is because of individuals in ND have expressed concerns over this matter.

Currently in North Dakota, any city or county can pass laws arbitrarily banning citizens from owning any breed of pet dog.

Many of those local ordinances passed lack due process protections. Some even violate the service dog provision of the Americans with Disabilities Act. (ADA)

19 states have passed legislation that protect property rights by prohibiting breed-discriminatory or specific ordinances.

This bill's goals are the protection of property rights and the enhancement of community safety in the most effective and most thorough way possible. Because everyone benefits from a safe society, both people and pets.

In ND we really have not looked into these issues before therefore I thought a study was a great start and ask this committee's favorable recommendation.

Thank you Madame Chairwomen

15.0433.03000

Sixty-fourth
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1191**

*Attch #2
HCR 3010
03/30/2015
J# 25512*

Introduced by

Representatives Louser, Beadle, Boehning, B. Koppelman

- 1 A BILL for an Act to create and enact a new section to chapter 47-16 of the North Dakota
2 Century Code, relating to service or assistance animals in rental dwelling units.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 47-16 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Disability documentation for service or assistance animal in rental dwelling.**

7 A landlord may require reliable supporting documentation be provided by a tenant of a
8 rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a
9 service animal or assistance animal be allowed as an accommodation on the rented premises
10 under any provision of law. Reliable supporting documentation may be provided by a physician
11 or medical professional. Reliable supporting documentation must confirm the tenant's disability
12 and the relationship between the tenant's disability and the need for the requested
13 accommodation. A landlord may not require supporting documentation from a tenant if the
14 tenant's disability or disability-related need for a service animal or assistance animal is readily
15 apparent or already known to the landlord.

15.0218.01000

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1192

Introduced by

Representatives Louser, Beadle, Boehning, B. Koppelman

1 A BILL for an Act to amend and reenact section 47-16-07.1 of the North Dakota Century Code,
2 relating to security deposits that may be required for lessees with pets.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 47-16-07.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **47-16-07.1. Real property and dwelling security deposits - Limitations and**
7 **requirements.**

8 1. The lessor of real property or a dwelling who requires money as a security deposit,
9 however denominated, shall deposit the money in a federally insured interest-bearing
10 savings or checking account for the benefit of the tenant. The security deposit and any
11 interest accruing on the deposit must be paid to the lessee upon termination of a
12 lease, subject to the conditions of subsection 2. A lessor may not demand or receive
13 security, however denominated, in an amount or value in excess of one month's rent,
14 ~~except if the lessee is housing a pet on the leased premises, the~~

15 2. A lessor may charge a lessee a pet security deposit for keeping an animal that is not a
16 service animal or companion animal required by a tenant with a disability as a
17 reasonable accommodation under fair housing laws. A pet security deposit may not
18 exceed the greater of two thousand five hundred dollars or an amount equivalent to
19 two months' rent.

20 ~~2.3.~~ A lessor may apply security deposit money and accrued interest upon termination of a
21 lease towards:

22 a. Any damages the lessor has suffered by reason of deteriorations or injuries to the
23 real property or dwelling by the lessee's pet or through the negligence of the
24 lessee or the lessee's guest.

Sixty-fourth
Legislative Assembly

- 1 b. Any unpaid rent.
- 2 c. The costs of cleaning or other repairs which were the responsibility of the lessee,
- 3 and which are necessary to return the dwelling unit to its original state when the
- 4 lessee took possession, reasonable wear and tear excepted.
- 5 Application of any portion of a security deposit not paid to the lessee upon termination
- 6 of the lease must be itemized by the lessor. Such itemization together with the amount
- 7 due must be delivered or mailed to the lessee at the last address furnished lessor,
- 8 along with a written notice within thirty days after termination of the lease and delivery
- 9 of possession by the lessee. The notice must contain a statement of any amount still
- 10 due the lessor or the refund due the lessee. A lessor is not required to pay interest on
- 11 security deposits if the period of occupancy was less than nine months in duration.
- 12 Any amounts not claimed from the lessor by the lessee within one year of the
- 13 termination of the lease agreement are subject to the reporting requirements of section
- 14 47-30.1-08.
- 15 ~~3-4.~~ A lessor is liable for treble damages for any security deposit money withheld without
- 16 reasonable justification.
- 17 ~~4-5.~~ Upon a transfer in ownership of the leased real property or dwelling, the security
- 18 deposit and accrued interest shall be transferred to the grantee of the lessor's interest.
- 19 The grantor shall not be relieved of liability under this section until transfer of the
- 20 security deposit to the grantee. The holder of the lessor's interest in the real property
- 21 or dwelling at the termination of a lease shall be bound by this section even though
- 22 such holder was not the original lessor who received the security deposit.
- 23 ~~5-6.~~ This section applies to the state and to political subdivisions of the state that lease real
- 24 property or dwellings and require money as a security deposit.

Attachment #3

HCR 3010

03/30/2015

J#25572

SERVICE ANIMALS, ASSISTANCE ANIMALS, AND HOUSING

This memorandum was requested to review federal and state law on housing discrimination when a landlord is requested to permit an animal in rented premises as an accommodation for a disability of a tenant.

The North Dakota Supreme Court in *Lucas v. Riverside Park Condominiums*, 776 N.W.2d 801 (2009), determined that for an individual with a disability to be granted a reasonable accommodation by a landlord under the Fair Housing Act (FHA), the individual must request and also provide documentation substantiating a request for a reasonable accommodation and the landlord may request additional information reasonably necessary to make a meaningful review and informed decision as to whether an animal is necessary to allow the individual an equal opportunity to use and enjoy the dwelling.

Enacted in 1999, North Dakota's Housing Discrimination Act, North Dakota Century Code Chapter 14-02.5, is modeled to be substantially equivalent to the federal FHA. Section 14-02.5-06 provides that it is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a person's disability. Section 14-02.5-06 provides that "discrimination" is defined to include "a refusal to make reasonable accommodations in rules, policies, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." Section 14-02.5-01 further provides a "disability" is "a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such impairment, or being regarded as having such an impairment."

AMERICANS WITH DISABILITIES ACT

In 1990 Congress enacted the Americans with Disabilities Act (ADA). Title III of the ADA prohibits disability discrimination in public accommodations, including housing. This section goes beyond the Fair Housing Amendments Act in applying to properties including restaurants, theaters, hotels, retail stores, and recreational facilities. In Title 42, Chapter 126, an individual with a disability is defined as one with a physical or mental impairment that substantially limits one or more major life activities of such individual, and that the individual either has a record of such impairment or has been perceived to have such an impairment, whether the impairment limits or is perceived to limit a major life activity. A major life activity is one of those that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

The ADA defines "service animal" as any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. The ADA further provides that a service animal is a reasonable accommodation, a reasonable accommodation being something that can be done or changed in order to allow the individual with a disability an equal opportunity to enjoy the property or facility. Under the ADA, the animal need only meet the definition of "service animal" to be covered by the law. If an animal qualifies as a service animal, ADA-covered entities may not restrict access to a person with a disability on the basis of his or her use of that service animal unless the animal is out of control and its handler does not take effective action to control it or if the animal is not housebroken. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

FAIR HOUSING AND REHABILITATION ACTS

The FHA was passed as Title VIII of the Civil Rights Act of 1968. With the passage of the Fair Housing Amendments Act of 1988, Congress created a right for disabled persons to live in the housing of their choice. The definition for an individual with a disability is the same under the FHA and Section 504 of the Rehabilitation Act as the definition under the ADA, an individual with a disability is one with a physical or mental impairment that substantially limits one or more major life activities, is regarded as having such an impairment, and has a record of such an impairment. In the years since, many disabled individuals have fully asserted this right and when denied housing or reasonable accommodations, sought recourse through both private suits and the Department of Housing and Urban Development's (HUD) administrative enforcement mechanism. The Rehabilitation Act of 1973 extends civil rights protection to the disabled and requires entities receiving public money to make reasonable accommodations for qualified individuals.

For purposes of the FHA, a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. The FHA makes it unlawful to refuse to make

reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. A request for a reasonable accommodation may also be denied if providing the reasonable accommodation is not reasonable, such as if it would impose a financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations. Under the FHA, a housing provider may not require individuals with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. If a disability is not obvious, a housing provider may request reliable disability-related information that is necessary to verify that the person meets the FHA's definition of disability, describes the needed accommodation, and shows the relationship between the person's disability and the need for the requested accommodation. This information can be provided by a doctor or other medical professional, a peer support group, a nonmedical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

Under the FHA and Section 504 of the Rehabilitation Act, individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise restricts or prohibits animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Although the new ADA rules state that emotional support animals do not qualify as service animals, they qualify as permitted reasonable accommodations for persons with disabilities under the FHA. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.

DEFINITION OF SERVICE ANIMAL

In a 2011 memorandum, HUD explained that although the ADA definition of "service animals" includes dogs and excludes emotional support animals, disabled individuals may request a reasonable accommodation for assistance animals in addition to dogs, including emotional support animals, under the FHA or Section 504 of the Rehabilitation Act. The memorandum went on to explain that in situations where both laws apply, housing providers must meet the broader FHA and Section 504 standard in deciding whether to grant reasonable accommodation requests.

The ADA rules define "service animal" as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." Thus, trained dogs are the only species of animals that may qualify as service animals under the ADA (there is a separate provision regarding miniature horses) and emotional support animals are expressly precluded from qualifying as service animals.

Neither the FHA, Section 504, or HUD's implementing regulations contain a specific definition of the term "service animal." However, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHA and Section 504. The ADA regulation does not change this FHA and Section 504 analysis, and specifically notes, "under the FHA, an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the animal does not pose a direct threat." In addition, the preambles to the new rules state that emotional support animals do not qualify as service animals under the ADA but may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHA."

APPLICATION TO STATES

The ADA definition of "service animal" applies to state and local government services, public accommodations, and commercial facilities; the FHA covers all housing services and facilities; and HUD's Section 504 regulations apply to all recipients of HUD funds. The FHA applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of voucher assistance. The FHA's protection against disability discrimination covers home seekers with disabilities, but also buyers and renters without disabilities who live or are associated with individuals with disabilities. Any person or entity engaging in prohibited conduct, such as refusing to make reasonable accommodations in rules, may be held liable under the FHA. Courts have applied the FHA to individuals, corporations, associations, and others involved in the provision of

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housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services.

Some types of entities, such as rental offices and housing authorities, are subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHA or Section 504. Entities must ensure compliance under all relevant civil rights laws. Compliance with the ADA's regulations does not ensure compliance with the FHA or Section 504. An entity that is subject to both the ADA and the FHA or Section 504 must permit access to ADA-covered "service animals" and, additionally, apply the more expansive assistance animal standard.

CONCLUSION

It appears that the assertion by a tenant of a disability requiring that an animal must be allowed on rental housing premises, by itself, does not require the landlord to grant an accommodation for that animal's presence. A landlord is entitled to require documentation substantiating a physical or mental impairment substantially limiting a major life activity, how the requested animal assists the disabled individual with regard to that disability, and that allowing the animal on the premises is a reasonable accommodation.