



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE CIVIL RIGHTS COMMITTEE
AND ANIMAL LAW COMMITTEE**

**A.7958
S.3866**

**M. of A. Jaffee
Sen. Carlucci**

AN ACT to amend the civil rights law, in relation to defining a "three-unit service dog team" and granting rights and privileges to such teams

THIS BILL IS OPPOSED

The New York City Bar Association opposes A.7958/S.3866. The bill amends the section of NYS Civil Rights Law that pertains to the use of a service dog by a person with a disability. Specifically, the bill creates a new definition for a "three-unit service dog team" which would mean "a team consisting of a person with a disability, a trained service dog, and a person over the age of eighteen who has been trained to handle a service dog". The bill goes on to provide that team members "engaged in continuing training of a service dog" shall have the same rights and privileges as a person with a disability under the Civil Rights Law.

We oppose the bill since it would limit, rather than enhance, rights already recognized under NYS Civil Rights Law §§ 47 and 47-b(3).¹ Section 47 gives persons with disabilities who are accompanied by a guide, hearing, or service dog virtually unlimited access. Sec. 47-b(3) grants the same rights to "[p]ersons qualified to train dogs to aid and guide persons with a disability, while engaged in such training activities"

As discussed below, the Americans with Disabilities Act (ADA), which is applicable in virtually all contexts covered by the NYS Civil Rights Law, recognizes that a person need not have formal training to be qualified to train a service animal and, indeed, that a person with a disability is qualified to train the animal. To the extent the person with a disability is a minor, someone who accompanies the minor as a caregiver would be protected against discriminatory conduct under the ADA based on his or her relationship with a disabled person.

Despite this, the present bill would add to the Civil Rights Law a requirement that the trainer be over the age of 18 and have been "trained to handle" a service animal.² The law

¹ Civil Rights Law Sec. 47-a prohibits employment discrimination based on accompaniment by a service animal and appears unrelated to the present bill.

² The bill states that a "three-unit service dog team" shall mean "a team consisting of a person with a disability, a trained service dog, and a person over the age of eighteen who has been trained to handle a service dog".

currently imposes no age limit and a person may be qualified to train a service animal by virtue of the individual's own experience as a person with a disability. The requirement that the canine member of the team already be trained could further restrict current rights to use guide, hearing, and service dogs, or to train them in the first place.

Notably, both the Bush and Obama Justice Departments explicitly have rejected calls for formal training and certification requirements for service animals. In its "Section-by-Section Analysis and Response to Public Comments" regarding the amendments to its ADA regulations effective March 15, 2011, the Justice Department states:

Training requirement. 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. While some groups have urged the Department to modify this position, the Department has determined that such a modification would not serve the full array of individuals with disabilities who use service animals, since individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their 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.³

Based on our belief that the bill language is superfluous, confusing and inconsistent with controlling provisions of the ADA, the City Bar opposes its enactment.

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³ See http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm and http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm (last visited May 21, 2014). The Bush Administration used similar language. Notice of Proposed Rulemaking to amend 28 CFR Part 36: Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities. 73 F.R. 34473 (June 17, 2008).