

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #15

January 17, 2020

S. 6172

By: Senator Martinez

A. 7331

By: M. of A. Dilan

Senate Committee: Investigations and Government
Operations

Assembly Committee: Codes

Effective Date: Immediately

AN ACT to amend the executive law, in relation to clarifying that reasonable accommodation to enable a person with a disability to use and enjoy a dwelling includes the use of an animal to alleviate the symptoms or effects of the disability.

LAW & SECTION REFERRED TO: Executive Law §§ 296.2-a(d)(2) and 296.18(2).

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

This bill would amend the Executive Law §§ 296.2-a(d)(2) and 296.18(2) by adding new language to these sections of law. The sections of the Executive Law amended by this legislation are part of the "Human Rights Law," Article 15 of the Executive Law. Article 15 starts with Section 291, "Equality of Opportunity a Civil Right," which states in subdivision 2, "... the ownership, use and occupancy of **housing accommodations** ... without discrimination because of age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, **or disability**, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right." [emphasis added] This bill will provide that the civil rights of the disabled are protected in housing matters that involve an animal that alleviates the symptoms or effects of the owner's disability.

Proposed language added to Executive Law §296.2-a(d)(2) would provide that the use of an animal to alleviate the symptoms of a disability, or to alleviate the effects of a disability, is a reasonable accommodation, and would apply to publically-assisted housing accommodations.¹ The proposed amendment to Executive Law §296.18(2) would provide that the use of an animal, in order to alleviate the symptoms of a disability, or to alleviate the effects of a disability, is a

¹ See Executive Law §296.2-a(d)(2) states: "[I]t shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations...(2) to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including reasonable modification to common use portions of the dwelling..."

reasonable accommodation, would apply to all housing accommodations.² The new language added to these sections is intended to clarify that the "reasonable accommodation" protections afforded to individuals with disabilities, within the context of housing, includes animals.

The Committee on Animals and the Law supports this legislation because it would eliminate confusion caused by current provisions of law that have resulted in costly, prolonged and unnecessary litigation, and differing standards from different courts. The bill is being proposed by the NYS Division of Human Rights, the agency that safeguards those rights of individuals that are guaranteed by the NY Human Rights Law, in order to provide a clearer standard that can be applied uniformly by courts when the issue of animals in housing as a reasonable accommodation for the disabled is brought into court.

As the bill sponsors' memo notes, "the Division of Human Rights has found in appropriate circumstances that permitting a person with a disability to maintain an animal as a reasonable accommodation is necessary for the person with a disability to use and enjoy a dwelling. It is reasonable to permit such an accommodation to a housing provider's 'no pets' policy, where medical evidence or other professional evidence shows that the animal aids the person with the disability by alleviating the symptoms or effects of a disability."

New York's Human Rights Law provides broader rights to individuals than federal disability statutes, and there should not be confusion in state courts applying the provisions of the HRL in the context of disability, housing, and animals; yet there is. The sponsor's memo cites three cases where courts are applying a different interpretation of law than the agency that administers the law, resulting in disparate treatment of individuals with disabilities. In *Matter of Kennedy St. Quad, Ltd. v. Nathanson*, 62 A.D.3d 879, 879 N.Y.S.2d 197, 2009 NY Slip Op 4063 (2nd Dept., 2009), the Appellate Division granted a cooperative corporation's petition and reversed a NYS Division of Human Rights determination, which had upheld an administrative judge's recommendation that the dog in question be allowed in the apartment of a disabled individual. The recommendation was based upon evidence from physicians and a psychologist, presented at a hearing, which demonstrated that having the dog in the apartment helped ameliorate complainants' symptoms of depression. The decision stated that the administrative agency's decision was not based upon "substantial evidence" but gave no supporting illustrations to buttress that rationale. Insofar as "the reviewing court should review the whole record to determine whether there is a rational basis in it for the findings of fact supporting the agency's decision" [see *300 Gramatan Ave. Associates v. State Division of Human Rights*, 408 N.Y.S.2d 54, 45 N.Y.2d 176, 379 N.E.2d 1183 (N.Y., 1978)], the Second Department failed to review whether there was a rational basis for the NYSDHR determination. This decision appears to be based on an outdated view of disability and the nexus between depression, emotional support dogs, and reasonable accommodations; yet it is often cited in support of decisions denying a disabled person the right to keep an animal with them in the housing they occupy.

² Executive Law §296.18(2) states: "It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations....[T]o refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling, including reasonable modification to common use portions of the dwelling..."

A recent Third Department case, *Hollandale Apartments v. Bonesteel*, 173 A.D.3d 55, 100 N.Y.S.3d 711 (3rd Dept., 2019), completely rejected *Matter of Kennedy St. Quad, Ltd. v. Nathanson* as a legal standard, stating: "[I]n our view, such a standard is inconsistent with the plain language of the FHA and the HRL, which requires only a determination that an accommodation "may be necessary."

Moreover, a recent Second Department decision with a fact pattern similar to *Nathanson*, but a contrary result, again shows the inconsistency of judicial interpretation of the law; see *1 Toms Point Lane Corp. v. N.Y. State Div. of Human Rights*, 2019 NY Slip Op 7392 (2nd Dept., 2019). This decision confirms the NYSDHR's determination, "[W]here, as here, there is conflicting medical evidence, a hearing officer is vested with the exclusive authority to weigh such evidence and credit the opinion of one medical expert over another ... it is not for this Court to substitute its judgment for that of the hearing officer."

Another Second Department decision with the opposite result further illustrates the need for legislative action to clarify the law. In *Delkap Mgmt., Inc. v. N.Y. State Div. of Human Rights*, 2016 NY Slip Op 8073, 144 A.D.3d 1148, 42 N.Y.S.3d 254 (2nd Dept., 2016), the housing management company challenged the NYSDHR finding that a dog was a reasonable accommodation where complainant, a co-op shareholder since 1988, was diagnosed with rheumatoid arthritis, supraventricular tachycardia and cardiac arrhythmia, and had a disability sticker on her car. In this case, the Appellate Division decision stated that her need for a dog was not supported by substantial evidence; a misapplication of the substantial evidence rule.

This bill would resolve future instances of inconsistent outcomes by amending the statutory language to reflect the current view that animals are a reasonable accommodation. Once a person has shown that an accommodation would be medically helpful to his or her proven disability, there cannot be a separate and additional requirement showing how the accommodation animal is required to use and enjoy one's home. When someone proves that he or she has a disability and a need for an accommodation animal, that accommodation animal must be allowed in the person's home, or the disabled person will not be able to use or enjoy that home. To interpret the *Matter of Kennedy St. Quad, Ltd. v. Nathanson* ruling otherwise would mean that while one can keep his or her accommodation animal, he or she cannot necessarily keep his or her apartment.

This is not significantly different from saying that someone who needs a ramp to get in and out of his or her home, or a handrail to be able to use the shower, must move elsewhere to have these accommodations. Virtually the entire purpose of the laws protecting the disabled, when it concerns housing, is to allow disabled individuals to have reasonable accommodations in their housing, not as some portable accommodation they must take elsewhere. Such an interpretation of *Nathanson* would create a situation where a disabled person could not take their particular accommodation to any housing that was the subject of the disability laws. Obviously, this result is contrary to the purpose of the laws protecting the disabled.

Notably, the Human Rights Law was amended in 2010³ for the purpose, among other things, of clarifying "that reasonable accommodations made by housing providers include reasonable modifications of common use portions of the dwelling, so that persons with disabilities will be able to have access to their homes."

Thus, the Committee on Animal Law applauds to sponsors' stated intentions to improve on the ability of persons with disabilities to receive reasonable accommodations, and recognizes that this proposed legislation will substantially reduce, if not eliminate the risks of conflicts in interpreting the Human Rights Law as it affects housing with "no pets" policies where animals are necessary to "alleviating the symptoms or effects of a disability."

For the foregoing reasons, the NYSBA's Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.

³ See Chapter 196, Laws of 2010, Statement in Support.