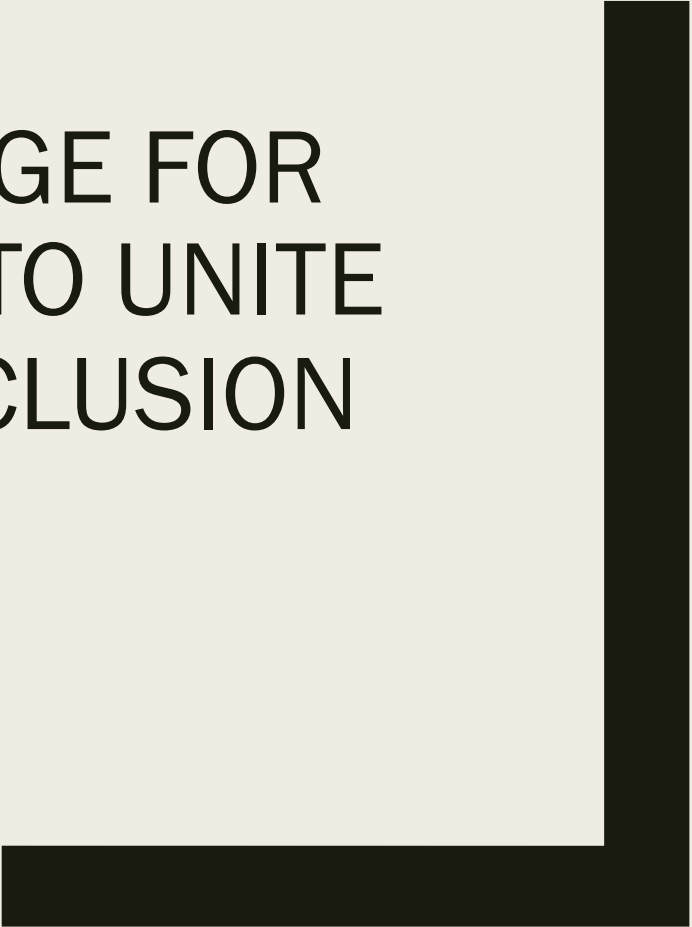




CUTTING EDGE KNOWLEDGE FOR
EVERY TYPE OF ADVOCATE TO UNITE
AND ACHIEVE GREATER INCLUSION



- All information provided is non-binding and does not constitute legal advice.
- This is the ultra-reader's digest version.

Overview

- Legislative Advocacy Basics
- Important recent state legislation
- Important recent federal legislation
- Service and emotional support animals
- Questions and answers session

The Basics

- Legislation is important because it not only provides for critical rights, but it also leads to the implementation or development of policy.
- For example, the ADA has led to more inclusive policies for individuals with disabilities.
- Wherever there is an unmet need or a legal transgression against persons with disabilities, legislation can sometimes help.
- Legislation usually happens when a constituent or voter approaches a legislator with a need and suggests legislation to meet that need.

Advocacy- the Basics

- Legislative Advocacy starts by getting to know your legislators or building relationships with them.
- You can visit legislature.alabama.gov and click on “find my legislator” to identify your state representative and senator.
- It is best to contact your representative or senator in the home district, not while they are in Montgomery due to the high volume of lobbyists trying to get their attention when the legislature is in session.
- This is good “home cooking”.
- Tell them you live in their district and need help.
- It is helpful to provide a draft of any proposed legislation- sometimes you can adapt legislation from other states.

Recent Legislation that Impacts People with Disabilities in Alabama

- Transportation
- Volunteer Transportation Providers Act, No. 2019-450
- Primary sponsor: Rep. KL Brown
- Provides Good Samaritan protection against liability for transportation providers who transport individuals to healthcare providers without compensation.
- It is intended to encourage use of accessible church buses to transport persons with disabilities to the doctor.
- It protects against simple negligence against claims by the individual with the disability, not against intentional wanton acts.

LEMON LAW

- **New Assistive Devices Warranty Act (Lemon Law for Assistive Devices)**
- **Act 2018-448**
- **Original Sponsor: Rep. Ken Johnson**
- **Signed by Governor Kay Ivey on 3/28/18.**

Lemon Law

- Definition of Assistive Device covered by this law:
 - *Any device, costing five thousand dollars (\$5,000) or more,*
 - *including a demonstrator, that a consumer purchases or accepts*
 - *transfer of in this state which is used for a major life*
 - *activity.*

- **A. What is included:**
 - *1. Manual wheelchairs, motorized wheelchairs,*
 - *motorized scooters, and other aids that enhance the mobility*
 - *of an individual;*
 - *2. Voice synthesized computer modules, optical*
 - *scanners, talking software, Braille printers, and other devices that enhance the ability of a sight impaired*
 - *individual to communicate.*

Lemon Law

■ B. What is not included:

- 1. Hearing aids, telephone communication devices for the deaf, assistive listening devices, or other aids that enhance the ability of an individual to hear;
- 2. Disposable assistive devices with a useful life of one year or less;
- 3. Assistive devices dispensed, sold, injected, or implanted by a licensed physician, licensed physician assistant, or any individual working with or for the practice of a licensed physician, employer, or other business entity that is primarily engaged in the practice of medicine.

Lemon Law

- II. What the manufacturer, dealer or lessor is required to do:
- A. If the manufacturer, dealer, or lessor either refuses to accept a device which a consumer makes available for repairs or makes a reasonable attempt to repair, but **the nonconformity is not actually repaired, the manufacturer shall be required to provide a refund or replacement of the device**, whichever is requested by the consumer or the agency or
- B. If the consumer or the agency requests a refund or a device which was purchased, **the manufacturer shall refund to the consumer** and to any holder of a perfected security interest in the assistive device of the consumer, as their interest may appear, **the full purchase price plus any finance charge or sales tax paid by the consumer at the point of sale and any collateral costs incurred by the consumer, less a reasonable allowance for use.**

Lemon Law

- C. If the consumer elects to receive a **comparable new assistive device**, the manufacturer shall provide the consumer or the agency with **the comparable new assistive device no later than 30 days after the consumer or lessor offers to transfer possession of the assistive device having the nonconformity to the manufacturer.**

Lemon Law

- **III. What the consumer is required to do:**
- **A. The consumer or the agency shall return the assistive device having the nonconformity to the manufacturer.**

Lemon Law

- **IV. Statute of limitations (how long consumer has to enforce this law):**

A. Time period to enforce the protections of law: the duty of a manufacturer shall apply for **the period of the express warranty of the manufacturer or**

B. A consumer may bring an action to recover any damages caused by a violation of this act **within four years after the cause of action has accrued.**

Lemon Law

- **V. Other important provisions:**
- A. This act shall not limit rights or remedies available to a consumer under any other law.
- B. Any waiver of rights by a consumer under this act shall be void.
- **VI. Damages:**
- The court may award a consumer who prevails **up to treble damages, together with costs, disbursements, and reasonable attorney fees, and any equitable relief** that the court determines is appropriate.
- ***Note: this is a summary of the law's major provisions and does not include all parts of the law. The information contained within this summary is non-binding and is not legal advice. It is given for information purposes only.**

Service Animals

- SB 10: Amends state law
- Act No. 2019-478
- Primary sponsor: Senator Linda Coleman-Madison
- Makes it a misdemeanor to fraudulently claim an animal as a service animal in housing or public accommodations.
- Alabama Assistance and Service Animal Integrity In Housing Act
- Act No. 2018-235
- Primary Sponsors: Representatives Fridy and Lovvorn and Senator Whatley
- Makes it a misdemeanor to misrepresent an animal as an assistance or service animal in housing and allows a \$500 fine.

Sales and Use Tax Exemption

- Sales and use tax exemption on adaptive equipment for motor vehicles
- Act No.2019-444
- Primary sponsor: Representative Kerry Rich
- Exempts adaptive equipment for motor vehicles from sales and use tax
- Would include hand controls or wheelchair lifts

Protection for Blind Parents

- Children and Senior Advocacy
- Act No. 2019-274
- Primary sponsor: Representative Rhonda Hollis
- The blindness of an individual may not serve as a basis for denial or restriction of **visitation or custody** in family or dependency law cases, **adoption or denial of foster care** when the visitation, custody, adoption, or placement in foster care is determined to be otherwise in the best interest of the child.
- A person who alleges that the individual's blindness would have a detrimental impact on a child, the person raising the allegation bears the burden of proving by **clear and convincing evidence** that the blindness of the individual is endangering or will likely endanger the health, safety, or welfare of the child.

Law Enforcement Sensitivity Training

- Law Enforcement Sensitivity Training
- Did not pass
- Primary sponsor: Senator Rodger Smitherman
- Would have required disability sensitivity training for law enforcement officers

Accessible Parking

- Amends current law
- Act No. 2018-458
- Primary sponsor: Representative Ken Johnson
- Allows police officers to tow and ticket vehicles parked on access aisles or illegally parked in accessible parking spaces.

Recent Federal legislation

- Raise the Wage Act, H.R. 582 [passed House, but not yet Senate]
- Law to phase out subminimum wage [14(c) of FLSA] for individuals with disabilities
- Also raises minimum wage to \$15 an hour by 2025
- Disability Integration Act S. 117, H.R. 555
- This bill prohibits government entities and insurance providers from denying community-based services to individuals with disabilities that require long-term service or support that would enable such individuals to live in the community and lead an independent life.
- The bill requires the Department of Justice and the Department of Health and Human Services (HHS) to issue regulations requiring government entities and insurance providers to offer community-based long-term services to individuals with such disabilities who would otherwise qualify for institutional placement.

Federal Legislation

- ADA Education and Reform Act of 2017 H.R. 620
- Ultimately died in the U.S. Senate
- This bill requires the Disability Rights Section of the Department of Justice to develop a program to educate state and local governments and property owners on strategies for promoting access to public accommodations for persons with a disability. The program may include training for professionals to provide a guidance of remediation for potential violations of the Americans with Disabilities Act of 1990.
- (Sec. 3) The bill prohibits civil actions based on the failure to remove an architectural barrier to access into an existing public accommodation unless: (1) the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and (2) the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description. The aggrieved person's notice must specify the circumstances under which public accommodation access was denied.

Empower Care Act

- H.R.5306/S. 548— 115th Congress (2017-2018)
- Introduced in House (03/15/2018)
- Ensuring Medicaid Provides Opportunities for Widespread Equity, Resources, and Care Act or the EMPOWER Care Act
- This bill amends the Deficit Reduction Act of 2005 to extend funding through FY2022 for the Money Follows the Person Rebalancing Demonstration Program and to otherwise revise the program. (Under this program, the Centers for Medicare & Medicaid Services must award grants to state Medicaid programs to assist in rebalancing states' long-term care systems.)
- The Money Follows the Person (MFP) demonstration program was designed to help states transition people with disabilities from institutions into the community and to assist states in rebalancing their long-term services and supports systems to increase access to home and community-based services. [NCIL Legislative Agenda document]

Service Animals

- ADA definition of service animal
 - *Service animals are defined as dogs that are individually trained to do work or perform tasks for people with [provide assistance to an individual with a disability]. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.*
 - *Beginning on March 15, 2011, only dogs [except in some cases miniature horses] are recognized as service animals under titles II and III of the ADA.*

Miniature Horses

- In addition to the provisions about service dogs, the DOJ's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.)
- Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

ADA Definition of Service Animal

- Regs. clearly state that
 - *Animals whose primary function is to provide emotional support would not be service animals.*
 - *The difference between a psychiatric service animal and an emotional support animal is the service provided.*
 - *A psychiatric service animal is trained to perform work or a task.*
 - *Emotional support animals' sole function is to provide comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being.*

Service Animals

- Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself.
- Some examples include:
 - *Alerting persons with hearing impairments to sounds or intruders.*
 - *Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.*
 - *Assisting persons with mobility impairments with balance.*
 - *Providing minimal protection or rescue work.*

Service Animals

- The work or task a dog has been trained to provide must be directly related to the person's disability.
- Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.
- This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Exclusion of Service Animals

- A business may exclude any animal, including a service animal, from a facility when that animal's behavior poses a direct threat to the health or safety of others.
- For example, any service animal that displays vicious behavior towards other guests or customers may be excluded.
- A business may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually.
- Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

Exclusion

- Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals.

Exclusion

- Regs. state that
 - *If an entity excludes an animal, it must give the individual with a disability the opportunity to benefit from or participate from the services without having the service animal on the premises.*

Exclusion

- The ADA excludes therapy or comfort animals as service animals
- The Fair Housing Act includes such animals as service animals.

State Law

- **Section 21-7-4**
- **Right of person with a disability to be accompanied by service animal.**
- (b) Every person with a disability, including a person who is totally or partially blind, hearing-impaired, or diagnosed on the autism spectrum shall have the right to be accompanied by a service animal in any public place, including a public or private school, and any of the places listed in Section 21-7-3. The person may not be required to pay an extra charge for the service animal.
- (d) **A person training a service animal shall be entitled to the same privileges granted to a person with a disability pursuant to subsection (b).**
- f) This section does not relieve a person accompanied by a service animal from liability for any damages done to the premises or facilities by the service animal.

Service Animal v. Emotional Support Animal

- The Fair Housing Act ensures the right to bring an ESA into housing.
- The ADA does not include ESAs within its definition of service animals.
- Most businesses have a policy that excludes pets.
- Does the ADA absolutely prohibit ESAs from entrance to businesses and public entities like cities, counties and state agencies?
- Would it be a reasonable accommodation under the ADA to allow entry of ESAs into places of employment, classrooms or areas generally open to the public like stores?

The End

- Any questions or comments?