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# RACHAEL A. CABRAL-GUEVARA

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STATE SENATOR • 19<sup>TH</sup> SENATE DISTRICT

*Testimony before the Senate Committee on Health*

*Senator Rachael Cabral-Guevara*

*December 7, 2023*

Hello, members of the Senate Committee on Health. Thank you for allowing me to provide testimony on Senate Bill 728, an important bill that will waive dog licensing fees for all service dog owners.

Current law requires municipalities to charge a dog licensing fee to all dog owners with few exceptions. Included in these exceptions are some, but not all, types of service dogs. Specifically, service dogs trained to assist blind, deaf, or mobility-impaired individuals are exempt. This excludes other types of trained service dogs such as a seizure response dog or diabetic alert dog.

This bill would broaden the current definition of “service animal” to include guide dogs, signal dogs, or other animals trained to perform tasks for the benefit of an individual with a disability. Additionally, this bill will waive dog licensing fees for service dog owners, so that they may receive a dog license annually for free.

Not only would these actions remove an unnecessary burden for individuals with disabilities, but they would also align Wisconsin law with federal ADA guidelines.

I am hopeful you will be able to support this important piece of legislation that will end the additional fees on individuals with certain disabilities.

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# NATE GUSTAFSON

STATE REPRESENTATIVE • 55<sup>TH</sup> ASSEMBLY DISTRICT

*Testimony in Support of Senate Bill 728*

*Senate Committee on Health*

*Thursday, December 7, 2023*

Thank you, Chairwoman Cabral-Guevara, and esteemed members of the Senate Committee on Health for scheduling this public hearing and providing me with the opportunity to testify in favor of Senate Bill 728. I also want to express my appreciation to my colleague, Senator Cabral-Guevara, for her leadership on this bill in the Senate.

Under current law, every dog specifically trained to lead blind or deaf persons or to provide support for mobility-impaired persons is exempt from the dog license tax, and every person owning such a dog receives a free dog license annually from the local collecting officer upon application. Senate Bill 728 extends these exemptions to include every service dog.

Under the bill, a service animal is a guide dog, signal dog, or other animal that is individually trained or is being trained to do work or perform tasks for the benefit of an individual with a disability, including the work or task of guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Service dogs undergo training to address a variety of health issues, including assistance with seizures, diabetes, autism, allergies, or psychiatric problems. In many cases, service dogs are integral for day-to-day activities.

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# NATE GUSTAFSON

STATE REPRESENTATIVE • 55<sup>TH</sup> ASSEMBLY DISTRICT

Consider the case of Jesse Lovell, a veteran from Sheboygan grappling with PTSD and hearing loss following combat. Jesse found Oliver, “a spunky dog who knows when someone needs love and compassion”. After finding Oliver, Lovell is thriving and is grateful to have a service dog to make his life easier.

The "dog tax" varies across Wisconsin. Senate Bill 728 proposes to bring the "dog tax" down to zero for every service dog.

I urge you to vote for Senate Bill 728. Your careful attention to this matter is greatly appreciated, and I trust that you will recognize the positive impact Senate Bill 728 can have on our constituents and our state as a whole.

Thank you for your time and consideration.

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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SENATOR RACHAEL CABRAL-GUEVARA

FROM: Margit Kelley, Principal Attorney

RE: Waiver of Dog Licensing Fee for Individually Trained Service Dog

DATE: November 8, 2023

You asked if a municipality could waive the dog licensing fee for a service animal that is individually trained to work or perform tasks for a person with a disability. Very briefly, state law requires a municipality to charge a dog licensing fee and allows only limited, identified exemptions from the mandatory dog licensing fee. These exemptions include some, but not all, types of service dogs that are individually trained to work or perform tasks for a person with a disability. A municipality may not create additional exemptions, as the municipal dog licensing fee is a statutory requirement.

However, federal law under the Americans with Disabilities Act (ADA) preempts state and local law in instances where the federal law provides greater protections for a person with a disability. In this case, there is a discrepancy between the state law and the ADA, as the state waiver does not exempt all service dogs that are individually trained to work or perform tasks for a person with a disability. Accordingly, to comply with the ADA, a municipality should grant an individual waiver of the dog licensing fee in each case in which a dog is individually trained to work or perform tasks for a person with a disability.

## MUNICIPAL DOG LICENSING FEE

Current law requires a dog owner to license any dog over five months of age and to pay a tax for the dog license, subject to certain conditions and limited exceptions. The amount of the dog license tax is set by statute, but a city, village, town, or county may increase the tax to cover the cost of licensing, regulating, and impounding activities from the previous year. [ss. [174.05](#) and [174.07 \(1\) \(a\)](#), Stats.]

A service dog trained to perform certain tasks is required to be licensed but is exempt from the fee. The statutes allow the exemption for a dog that is “specially trained to lead blind or deaf persons or to provide support for mobility-impaired persons.” Accordingly, the exemption is provided only if a service animal is specially trained for a person with a disability who is blind, deaf, or mobility impaired. If a service dog meets one of those requirements, the local governmental unit must issue a free dog license to the owner. [s. [174.055](#), Stats.]

The service dog exemption does not apply to other types of individually trained service dogs, such as a dog that is individually trained as a seizure response dog or diabetic alert dog. This type of individually trained dog is not eligible under the statutes for the free dog license.

## ADA

Under the federal ADA regulations for state and local public entities, a public entity must make reasonable modifications to policies and procedures for a person with a disability, unless the modifications would fundamentally alter the nature of the public service or activity. Also, a public entity may not provide different aids, benefits, or services to any class of individuals with disabilities than is provided to others, unless the different treatment is necessary to provide an equally effective aid, benefit, or service as provided to others.<sup>1</sup> [28 C.F.R. s. 35.130 (b) (1) (iv) and (7) (i).]

The regulations define a “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 work or tasks performed by a service animal must be directly related to the individual’s disability.<sup>2</sup> [28 C.F.R. s. 35.104 (*Service animal*)].

According to guidance from the U.S. Department of Justice (U.S. DOJ), service animals are subject to local dog licensing and registration requirements. The guidance specifically notes that the ADA does not exempt service dogs from a general requirement for all dogs to be licensed. [See U.S. DOJ, [FAQ about Service Animals and the ADA #Q19](#) (February 28, 2020).]

As a related issue, the ADA specifies that a public entity may not ask or require a person with a disability to pay a “surcharge,” even if people with pets are required to pay fees. The word “surcharge” is not defined in the regulations, but in general use means an additional tax or extra fee. The preamble for the rule promulgation describes the provision as prohibiting any “additional costs” from being imposed on a person with a service animal, as additional costs should be factored into the overall cost of administering a program and passed on as a charge to all participants, rather than an individualized surcharge to the service animal user. [28 C.F.R. s. 35.136 (h); and 75 F.R. 56164.]

The ADA preempts state and local law in instances where the federal law provides greater protections for a person with a disability. [28 C.F.R. s. 35.103 (b).]

## DISCUSSION

Providing free licensure for some service dogs, but not others, is very likely a violation of the ADA. As noted above, under the ADA, a public entity may not provide different aids, benefits, or services to any class of individuals with disabilities than is provided to others, unless the different treatment is necessary to provide an equally effective aid, benefit, or service as provided to others. Providing an exemption from the dog licensing fee for service dogs trained to do certain tasks, but requiring a

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<sup>1</sup> The ADA regulations for state and local public entities also specify that a public entity must modify its policies, practices, or procedures to permit the use of a service animal by a person with a disability and must allow access to all areas and facilities used by the public, unless the animal is out of control or is not housebroken. This provision relates to physical accessibility, and is not at issue with dog licensing requirements. [28 C.F.R. s. 35.136.]

<sup>2</sup> The regulations note that examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. [28 C.F.R. s. 35.104 (*Service animal*)].

licensing fee for service dogs individually trained to assist with other disabilities, could be considered different treatment of a class of individuals.

In other words, the federal ADA does not prohibit a state or local governmental unit from imposing a licensing fee that applies to all animals, as long as an additional, higher fee is not imposed for a service animal. However, the fee exemption under state law that applies only to a service dog for certain disabilities is very likely impermissible under the ADA. Accordingly, to comply with the ADA, a local governmental unit should grant a waiver of the municipal dog licensing fee for all service dogs, equally, that are individually trained to work or perform tasks for a person with a disability.

As an alternative to individual waivers, to address the discrepancy between state and federal law, legislation could be enacted to specify that the dog license is free in each case in which a dog is individually trained to work or perform tasks for a person with a disability. For example, the fee exemption could be revised to incorporate the definition of "service animal" from the public accommodations protections. Those protections cover any service dog that is individually trained to work or perform tasks, rather than the current, limited tasks identified for the dog license tax exemption.<sup>3</sup> The definition is similar to the definition in the ADA regulations for state and local public entities and provides protections for a service dog that is "individually trained" to work or perform tasks for a person with a disability.

Please let me know if I can provide any further assistance.

MSK:jal

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<sup>3</sup> The public accommodations protections specify that a person with a disability is permitted to use a service animal in establishments such as restaurants, retail stores, and other businesses. For those protections, a "service animal" is defined as a guide dog, signal dog, or other animal that is individually trained or is being trained to do work or perform tasks for the benefit of a person with a disability, including the work or task of guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. [s. 106.52 (1) (fm), Stats.] Under this definition, the listed tasks are examples, and are not exhaustive. In other words, the specific examples in the definition would be covered, but other services for which an animal is individually trained to work or perform tasks for the benefit of a person with a disability would also be covered. For example, an animal that is individually trained as a seizure response dog or diabetic alert dog would also be covered by the definition in the public accommodations law.