

10:5-29

LEGISLATIVE HISTORY CHECKLIST

NJSA 10:5-29 (Repeals section of law against discrimination which exempted some facilities)

LAWS 1981 CHAPTER 391

Bill No. A1498

Sponsor(s) Dorla and others

Date Introduced April 17, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes ~~No~~ Amendments denoted by asterisks
according to Governor's recommendations
Date of Passage: Assembly Sept. 29, 1980 Re-enacted 11-23-81
Senate March 23, 1981 Re-enacted 1-4-82

Date of approval January 6, 1982

Following statements are attached if available:

Sponsor statement	Yes	No (Below)
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	X Yes	No
Veto Message	Yes	No
Message on signing	X Yes	No

Following were printed:

Reports	X	No
Hearings	X	No

Sponsors' statement:
The purpose of this bill is expressed in its title.

6/22/81

PP

1083

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1498

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1980

By Assemblymen DORIA, PATERNITI, MAYS, T. GALLO, COWAN,
JANISZEWSKI, DALTON and RILEY

Referred to Committee on Judiciary, Law, Public Safety and Defense

An Act to amend "An act concerning the civil rights ***and responsibilities*** of ***[a blind person accompanied by a trained dog guide]*** ***certain persons owning dogs*** and supplementing the 'Law Against Discrimination,' approved April 16, 1945 (P. L. 1945, c. 169) and Title 10 of the Revised Statutes," approved May 6, 1971 (P. L. 1971, c. 130).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 1 of P. L. 1971, c. 130 (C. 10:5-29) is amended to
2 read as follows:

3 1. Any blind ***or deaf*** person accompanied by a guide dog
4 trained by a recognized training agency or school is entitled, with
5 his dog, to the full and equal enjoyment, advantages, facilities and
6 privileges of all public facilities, subject only to the following
6A conditions:

7 a. A blind ***or deaf*** person, if accompanied by a guide dog,
8 shall keep such dog in his immediate custody at all times;

9 b. A blind ***or deaf*** person accompanied by a guide dog shall
10 not be charged any extra fee or payment for admission to or use
11 of any public facility;

12 c. A blind ***or deaf*** person who has a guide dog in his posses-
13 sion shall be liable for any damages done to the premises of a public
14 facility by such dog[;]

15 d. [A blind person who, after being duly warned of a danger
16 unique to such person's use of a particular public facility, is injured
17 in using such facility and is injured because of a danger of the type
18 about which warning was given, shall be deemed to have assumed
19 the risk of using the public facility]. (*Deleted by amendment*)

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

20 ***[*e. That a blind or partially blind pedestrian was not carry-*
21 *ing a cane or using a guide dog **or a deaf person was not using a*
22 *guide dog** in any place shall not be held to constitute or be*
23 *evidence of contributory negligence.****]

1 2. This act shall take effect immediately.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1498

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 7, 1980

The purpose of this bill, as amended, is to remove certain legal obstacles which blind people have had to overcome in legal actions for personal injuries.

The bill removes the statutory provision that a blind person who is warned of a danger in a public facility is deemed to have assumed the risk of harm if he continues to use that facility. Committee amendment adds a statutory provision that a blind person's failure to use a cane or dog shall not constitute contributory negligence.

The effect of this bill should be that each injury case involving a blind person shall rest on its own merits, rather than be decided on the basis of presumptions which are at times too restrictive to blind people and too lax toward the operators of public places.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1498

with Senate committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 10, 1980

The purpose of Assembly No. 1498 is to remove certain legal obstacles which blind people have had to overcome in legal actions for personal injuries.

First, Assembly No. 1498 deletes a provision from the "Law Against Discrimination" which states that a blind person who is warned of a unique danger in his using a public facility is deemed to have assumed the risk of harm if he continues to use that facility. It is felt that this provision is too restrictive on blind persons and too lax toward the operators of public facilities.

Secondly, Assembly No. 1498 provides that the failure of a blind person to use a cane or a guide dog in any place shall not be held to constitute or to be evidence of contributory negligence.

Assembly No. 1498 is supported by the Department of Human Services and the National Federation of the Blind of New Jersey.

Assembly No. 1498 was amended by the Senate Judiciary Committee to conform with provisions of P. L. 1980, c. 46 which extended to deaf persons accompanied by "hearing ear dogs" the same rights as blind persons accompanied by "seeing eye dogs". These amendments would in effect make the provisions of Assembly No. 1498 applicable to deaf as well as blind persons.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 16, 1981

ASSEMBLY BILL NO. 1498 (2 OCR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14(b) of the Constitution I herewith return Assembly Bill No. 1498 (2 OCR) with my objection for reconsideration.

This bill establishes a rule of evidence which would prevent a finding of contributory negligence because a blind or deaf person did not use a cane or guide dog. It would apply to all personal injury suits brought by a blind or deaf person.

This rule replaces, in the same statute, (NJSA 10:5-29), an 'assumption of risk' clause governing a blind person's use of a public facility. Under present law, if a blind person is warned of a danger unique to his use of a public facility and he is injured because of it, he would be effectively barred from recovering for those injuries.

I agree with the Assembly Judiciary, Law, Public Safety and Defense Committee's statement, that each injury case involving a blind person should rest on its own merits and not be decided on the basis of presumptions. I therefore support the Legislature's efforts to remove this 'assumption of risk' clause from the existing law. I find, however, that the Assembly Committee amendment is inconsistent with its expressed goal. Instead of removing a presumption against blind persons and allowing the trier of fact to compare the negligence of each party, the Committee has created a presumption in the blind or deaf person's favor. Furthermore, the Committee amendment would apply this rule of evidence to all personal injury suits, not only those involving a public facility.

If the Legislature seeks to adopt a rule of evidence with such broad application, it should not amend the Law Against Discrimination but should act within the framework of the Evidence Act of 1960.

I fully support the removal of any and all legal obstacles facing the blind and deaf. I also sympathize with efforts to accord special consideration to this population. However, tort law already grants this

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 2

consideration. A blind or deaf person is never held to the same standard of conduct as an ordinary plaintiff or defendant. Instead he must take the precautions, be they more or less, which the ordinary person would take if he were blind or deaf. W. Prosser, Law of Torts, § 32, 152 (4th ed. 1971).

I find then that the Assembly Committee amendment is a misplaced and unnecessary rule of evidence that unduly interferes with the trier of fact's role in the allocation of judicial fault. I recommend this bill be passed substantially as introduced.

Accordingly, I herewith return Assembly Bill No. 1498 (2 OCR) for reconsideration and recommend that it be amended as follows:

Page 2, Section 1, Lines 20 through 23: Delete in entirety.

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY