



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 298 (Substitute S-1 as passed by the Senate)
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Sponsor: Senator David Knezek (S.B. 298)
Senator Margaret O'Brien (S.B. 299)
Committee: Veterans, Military Affairs and Homeland Security

Date Completed: 8-4-15

RATIONALE

The Americans with Disabilities Act and its regulations require places of public accommodation to make reasonable modifications in their policies, practices, or procedures in order to grant access to a person with a disability, which may be a physical or mental impairment. The requirements include allowing a person with a disability to use a service animal. In 2010, the United States Department of Justice adopted a final rule that amended portions of the regulation relating to service animals. The final rule also extended to miniature horses many of the reasonable modification provisions pertaining to service animals.

Service animals can be important to veterans, among others. Many members of the military deployed overseas are subjected to physical injury in the course of their duties, and rely on a service animal when they are discharged. In addition, some veterans opt to use specially trained service animals in order to cope with symptoms of post-traumatic stress disorder, severe anxiety, or traumatic brain injury. Unlike physical injuries, however, mental illness is not visible. Reportedly, some veterans have been denied the use of their service dogs in some places of public accommodation, or have been denied access because of their animals. To address this issue, and to make the State's laws consistent with the changes in Federal regulations discussed above, it has been suggested that statutory amendments should change various terms and definitions, include protections for veterans with service animals, and include requirements for reasonable modifications to permit the use of a service animal or miniature horse by a person with a disability.

CONTENT

Senate Bill 298 (S-1) would amend the Michigan Penal Code to do the following:

- **Change various terms and definitions in provisions that involve the mistreatment of a service dog.**
- **Require a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability.**
- **Require a public accommodation to make reasonable modifications in its policies, practices, and procedures to permit the use of a miniature horse by a person with a disability.**

Senate Bill 299 (S-1) would amend Public Act 207 of 1970, which exempts certain dogs from license fees, to change various terms and definitions.

Each bill would take effect 90 days after its enactment. The bills are tie-barred to each other and to House Bills 4521 and 4527. (House Bill 4521 (H-1), as passed by the House, would create a new statute to allow a person with a disability to obtain an identification, tag, and vest for a service animal, and require the Department of Civil Rights to make those items available upon request. House Bill 4527 (H-1), as passed by the House, would amend Public Act 82 of 1981, which prohibits the use of certain collars or harnesses on service animals except by disabled people, to prohibit a

person from falsely representing that he or she is in possession of a service animal or a service animal in training.)

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Amended Terms & Definitions

The Code prohibits an individual from willfully and maliciously assaulting, beating, or harassing a dog that he or she knows or has reason to believe is a guide or leader dog for a blind individual, a hearing dog for a deaf or audibly impaired individual, or a service dog for a physically limited person. The Code also prohibits impeding or interfering with the duties of a guide, hearing, or service dog. The bill would refer to a person with a disability rather than a blind, deaf or audibly impaired, or physically limited individual. Where the Code refers to a guide, leader, hearing, or service dog, the bill would refer instead to a service animal.

"Person with a disability" would mean a person who has a disability as defined in Section 12102 of the Americans with Disabilities Act and 28 CFR 36.104: a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such an impairment. The term "person with a disability" would include a veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, and/or other service-related disabilities. "Veteran" would mean: a) a person who performed military service in the armed forces for a period of more than 90 days and separated from the armed forces in a manner other than a dishonorable discharge; b) a person discharged or released from military service because of a service-related disability; or c) a member of a reserve branch of the armed forces at the time he or she was ordered to military service during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and was released from military service in a manner other than a dishonorable discharge.

"Service animal" would mean the following: a) that term as defined in 28 CFR 36.104, or b) a miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability. (Under the Federal regulation, "service animal" refers to any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. The definition excludes other species of animals.)

Public Accommodations & Service Animals, Miniature Horses

The Code makes it a misdemeanor for a person who is the owner, lessee, proprietor, manager, agent, or employee of any place of public or private housing, accommodation, amusement, or recreation to refuse to permit a person with a disability or a trainer of service animals to enter or use the place, if the animal is wearing a blaze orange leash and collar or a harness, hearing dog cape, or service dog backpack, and the person with a disability, or trainer, possesses a pictured identification card certifying that the dog was trained by a qualified organization or that the person is the trainer. The bill would delete those provisions.

The bill would require a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability, and to make reasonable modifications in its policies, practices, and procedures to permit the use of a miniature horse by a person with a disability. A public accommodation would have to consider the following factors in determining whether reasonable modifications could be made to allow a miniature horse into a facility:

- The type, size, and weight of the miniature horse and whether the facility could accommodate those features.
- Whether the handler had sufficient control of the miniature horse.
- Whether the miniature horse was housebroken.
- Whether the miniature horse's presence in the facility would compromise legitimate and necessary safety requirements.

A public accommodation could ask a person with a disability to remove a service animal or miniature horse from the premises if the animal were out of control or not housebroken. If it did so, the public accommodation would have to give the person the opportunity to obtain goods, services, or accommodations without the service animal or miniature horse on the premises.

A service animal or miniature horse would have to be under the control of its handler, and have a harness, leash, or other tether unless the handler was unable because of a disability to use them, or their use would interfere with the service animal's or miniature horse's safe and effective performance of work or tasks. In either case, the service animal or miniature horse would have to be otherwise under the handler's control. "Otherwise under the handler's control" could include voice controls or signals.

A public accommodation would not be responsible for the care or supervision of a service animal or miniature horse.

A public accommodation could not ask about the nature or extent of the disability of the person with a disability, but could ask whether the service animal or miniature horse was required because of a disability, and what work or task the service animal or miniature horse had been trained to perform. A public accommodation could not require documentation when making an inquiry, or make an inquiry if it were readily apparent that the service animal or miniature horse was trained to do work for an individual with a disability. A public accommodation could not ask or require a person with a disability to pay a surcharge, or to comply with other requirements not applicable to people without pets. If a public accommodation normally charged people for damage caused, it could charge a person with a disability for damage caused by his or her service animal or miniature horse.

A person with a disability would have to be permitted to be accompanied by the service animal or miniature horse in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees were permitted to go.

A public accommodation that violated the bill's provisions would be guilty of a misdemeanor. (Under the Code, a misdemeanor for which no penalty is specified is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.)

"Public accommodation" would mean that term as defined in Section 12181 of the Americans with Disabilities Act and 28 CFR 36.104: a private entity that owns, leases (or leases to), or operates a place of public accommodation. ("Place of public accommodation" means a facility operated by a private entity whose operations affect commerce and fall within at least one of the listed categories, e.g., a place of lodging, an establishment serving food and drink, a place of education, or a station or other place used for public transportation.)

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Public Act 207 of 1970 provides that a dog is not subject to any fee for licensing if: a) the dog is used as a guide or leader dog for a blind person, a hearing dog for a deaf or audibly impaired person, or a service dog for a physically limited person, or b) the dog is owned by a partnership, corporation, or other legal entity that trains dogs for those purposes. Where the Act refers to a blind, deaf or audibly impaired, or physically limited individual, the bill would refer to a person with a disability. Where the Act refers to a guide or leader, hearing, or service dog, the bill would refer instead refer to a service animal. "Person with a disability", "service animal", and "veteran" would be defined as those terms would be defined in Senate Bill 298 (S-1).

MCL 750.50a & 750.502c (S.B. 298)
287.291 (S.B. 299)

BACKGROUND

On September 15, 2010, the U.S. Department of Justice issued a final rule pertaining to, among other things, service animals. In the final rule, "service animal" means "any dog that is individually trained to do work or perform tasks for an individual with a disability"; the rule also specifies that other species of animals are not service animals.¹

The final rule also includes language pertaining to miniature horses. While the rule does not classify miniature horses as service animals, it does indicate that public accommodations must make reasonable modifications to policies, practices, or procedures, with some exceptions,² to allow the use of a miniature horse by a person with a disability, provided the miniature horse has been individually trained to do work and perform tasks for a disabled person.³ Miniature horses have been trained to complete many of the same tasks as service animals since 1991. In many cases, miniature horses are preferred, or provide an advantage over service animals, i.e., dogs. For those with allergies or religious beliefs that prohibit the use of dogs, for example, miniature horses may be an acceptable substitute. Miniature horses also are generally stronger than dogs of similar sizes (Labradors, Great Danes, or Mastiffs), and are able to provide service for significant longer periods of time; a miniature horse can provide service for 25 years compared to seven years for a comparably sized dog.⁴

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Many veterans come back from service overseas with mental illness or traumatic brain injury. Some of these veterans are able to function in their daily lives and find comfort with a service animal. In addition to opening doors and performing tasks that a disabled veteran cannot perform, some service animals are trained to sense anxiety and alleviate it, or to wake a person having a post-traumatic stress-induced nightmare. Reportedly, some veterans have been refused entry to public accommodations while accompanied by their service animal. The bills would protect veterans diagnosed with post-traumatic stress disorder, traumatic brain injury, or other service-related disabilities and would allow those veterans to use service animals in places of public accommodation.

In addition, the bills would reflect rules adopted by the Federal government pertaining to the use of miniature horses and service animals, in general. The bills would make State law consistent with those Federal regulations, and would clarify the protections to be afforded to all individuals with a disability.

Opposing Argument

The bills would include a veteran diagnosed with post-traumatic stress disorder, traumatic brain injury, or other service-related disabilities within the proposed definition of "person with a disability". Generally, such a condition is not considered disabling unless the condition manifests itself as a disability. The bills would confer a special status on veterans with a listed condition. These veterans would be allowed the use of service animals, and businesses would have to accommodate them, regardless of whether their diagnosed condition disabled them. A similarly situated nonveteran would not have the same option. Veterans with disabilities should be, and are, allowed to use service animals if they have a disability as defined by the Americans with Disabilities

¹ 75 Federal Register 56266. The previous rule defined a service animal as "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability....". 28 C.F.R. § 36.104 (2009).

² 75 Federal Register 56273. The criteria stated in the final rule are nearly identical to the four factors Senate Bill 298 (S-1) would require public accommodations to consider in determining whether a reasonable accommodation could be made.

³ *Id.* at 56272.

⁴ *Id.*

Act. Accordingly, even without the listed conditions, the bills' references to veterans are unnecessary.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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The bill would have no fiscal impact on State government and could result in no net change in local incarceration and court costs. It is uncertain how many actions that are not considered misdemeanors under current law would be treated as misdemeanors under the bill. To the extent that the proposed definitions resulted in court and incarceration costs similar to those under current law, the fiscal impact on local government would be minimal.

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The bill would reduce local revenue by a minimal amount due to expanding the types of disabilities and service animals that qualify for an exemption from licensing fees. The bill would have no fiscal impact on the State.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.