



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bills 298 and 299 (as enacted)

**PUBLIC ACTS 144 & 145 OF 2015**

Sponsor: Senator David Knezek (S.B. 298)

Senator Margaret O'Brien (S.B. 299)

Senate Committee: Veterans, Military Affairs and Homeland Security

House Committee: Military and Veterans Affairs

Date Completed: 10-29-15

**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 animals 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 was 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 by a person with a disability.

**CONTENT****Senate Bill 298 amends 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.**

**Senate Bill 299 amends Public Act 207 of 1970, which exempts certain dogs from license fees, to change various terms and definitions.**

The bills were enacted on October 20, 2015, and will take effect 90 days after that date.

The bills were tie-barred to each other and House Bills 4521 and 4527. (House Bill 4521, Public Act 146 of 2015, creates 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, Public Act 147 of 2015, amends 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 or a service animal or a service animal in training.)

## **Senate Bill 298**

### Amended Terms & Definitions

The Penal 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 refers to a person with a disability rather than a blind, deaf or audibly impaired, or physically limited individual. Where the Code refers to a dog, or guide, leader, hearing, or service dog, the bill refers instead to a service animal.

The bill defines "person with a disability" as 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" includes a veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, and/or other service-related disabilities. The bill defines "veteran" as: 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.

The bill defines "service animal" as 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 deletes those provisions.

The bill requires a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability. If the service animal is a miniature horse, a public accommodation may use the following assessment factors to determine whether the miniature horse can be accommodated in its facility:

- The type, size, and weight of the miniature horse and whether the facility can accommodate those features.
- Whether the handler has sufficient control of the miniature horse.
- Whether the miniature horse is housebroken.
- Whether the miniature horse's presence in the facility compromises legitimate and necessary safety requirements.

The bill prohibits a public accommodation from asking a person with a disability to remove a service animal from the premises because of allergies or fear of the animal. A public accommodation may ask a person with a disability to remove a service animal from the premises if the animal is out of control or not housebroken. If it does so, the public accommodation must give the person the opportunity to obtain goods, services, or accommodations without the service animal on the premises.

The bill requires a service animal to be under the control of its handler, and have a harness, leash, or other tether unless the handler is unable because of a disability to use them, or their use would interfere with the service animal's safe and effective performance of work or tasks. In either case, the service animal must be otherwise under the handler's control, which includes voice controls or signals.

The bill provides that a public accommodation is not responsible for the care or supervision of a service animal.

If it is not obvious what service a service animal provides, the bill prohibits a public accommodation's staff from asking about a person with a disability's disability, requiring medical documentation or a special identification card or training documentation for the service animal, or asking that the service animal demonstrate its ability to perform work or tasks. Staff may ask whether the service animal or miniature horse is required because of a disability, and what work or task the service animal or miniature horse has been trained to perform. A public accommodation may not require documentation when making an inquiry, or make an inquiry if it is readily apparent that the service animal or miniature horse is trained to do work for an individual with a disability.

The bill also prohibits a public accommodation from isolating a person with a disability accompanied by his or her service animal, treating a person accompanied by his or her service animal less favorably than other patrons, or charging a fee to a person with a disability accompanied by his or her service animal that is not charged to other patrons without service animals. A public accommodation may 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 charges people for damage caused, it may charge a person with a disability for damage caused by his or her service animal or miniature horse.

The bill requires a person with a disability 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 are permitted to go, including public areas of establishments that sell or prepare food, even if State or local health codes prohibit animals on the premises. A public accommodation may exclude a service animal from a facility if the animal's presence interferes with legitimate safety requirements of the facility such as a surgery or burn unit in a hospital in which sterile field is required.

A public accommodation that violates the bill's provisions will 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.)

The bill defines "public accommodation" as that term is 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.)

### **Senate Bill 299**

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 refers to a person with a disability. Where the Act refers to a guide or leader, hearing, or service dog, the bill refers instead to a service animal. The bill defines "person with a disability", "service animal", and "veteran" as those terms are defined in Senate Bill 298.

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.<sup>1</sup>

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,<sup>2</sup> 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.<sup>3</sup> 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 significantly longer periods of time; a miniature horse can provide service for 25 years compared to seven years for a comparably sized dog.<sup>4</sup>

## **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 will protect veterans diagnosed with post-traumatic stress disorder, traumatic brain injury, or other service-related disabilities and allow those veterans to use service animals in places of public accommodation.

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

### **Opposing Argument**

The bills include a veteran diagnosed with post-traumatic stress disorder, traumatic brain injury, or other service-related disabilities within the definition of "person with a disability". Generally, such a condition is not considered disabling unless the condition manifests itself as a disability. The bills confer a special status on veterans with a listed condition. These veterans will be allowed the use of service animals, and businesses will have to accommodate them, regardless of whether their diagnosed condition disables them. A similarly situated nonveteran will 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 Act. Accordingly, even without the listed conditions, the bills' references to veterans are unnecessary.

Legislative Analyst: Jeff Mann

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<sup>1</sup> 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).

<sup>2</sup> 75 Federal Register 56273. The criteria stated in the final rule are nearly identical to the four factors Senate Bill 298 requires public accommodations to consider in determining whether a reasonable accommodation can be made.

<sup>3</sup> *Id.* at 56272.

<sup>4</sup> *Id.*

## **FISCAL IMPACT**

### **Senate Bill 298**

The bill will have no fiscal impact on State government and may 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 will be treated as misdemeanors under the bill. To the extent that the new definitions result in court and incarceration costs similar to those under current law, the fiscal impact on local government will be minimal.

### **Senate Bill 299**

The bill will 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 will 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.