

Legislative Analysis



MISREPRESENTATION OF EMOTIONAL SUPPORT ANIMALS ACT

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House Bill 4910 (H-3) as reported from committee
Sponsor: Rep. Matt Hall

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4911 as reported from committee
Sponsor: Rep. Sara Cambensy

1st Committee: Regulatory Reform
2nd Committee: Judiciary
Complete to 3-6-20

BRIEF SUMMARY: House Bill 4910 would create the Misrepresentation of Emotional Support Animals Act, which would prohibit individuals from falsely representing to a landlord that they have a disability or are using an emotional support animal. The bill would also prohibit health care providers from falsely representing that an individual has a diagnosis requiring use of an emotional support animal. House Bill 4911 would make complementary changes to provisions of the Revised Judicature Act (RJA) concerning tenant eviction.

FISCAL IMPACT: House Bill 4910 would have an indeterminate fiscal impact on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Under Michigan Law, renters of housing are allowed to have animals in their dwellings—regardless of their housing provider’s rules against it—if the animals are emotional support animals prescribed by a doctor. There are few mechanisms in place, however, for housing providers to ask for and gain evidence that such animals are for emotional support, and doing so may put them at risk of being sued for violation of civil rights legislation such as the federal Fair Housing Act. Some feel that, as a result, abuse of the system is widespread, with many individuals lying about their pets being emotional support animals in order to get them into a dwelling where they otherwise would not be allowed. Legislation has been proposed that would, among other things, prohibit a renter from falsely representing that his or her pet is an emotional support animal.

THE CONTENT OF THE BILLS:

House Bill 4910 would prohibit an individual from falsely representing either of the following to a *housing provider*:

- That he or she has a disability.
- That he or she is in possession of and requires the assistance of an *emotional support animal*.

Housing provider would mean a person that is subject to fair housing laws and that offers, provides, or regulates the use of a *dwelling*. It would include private and public businesses.

Dwelling would mean all or part of a building or structure that is occupied or intended to be occupied as a residence. It would include a building or structure that is part of an apartment, manufactured home, or condominium community, a group home or nursing home, or a seasonal residential facility.

Emotional support animal would mean a common domestic animal that a ***health care provider*** has determined is necessary to alleviate the disabling effects of a mental, emotional, psychological, or psychiatric condition or illness for a person with a disability who, in the absence of such an animal, would otherwise not have the same housing opportunities provided by a housing provider as those provided to a nondisabled person. Emotional support animal would not include a service animal as that term is defined in section 502c of the Michigan Penal Code.¹

Health care provider would mean a mental health professional licensed under the Mental Health Code or licensed in another state, a health facility or agency licensed under Article 17 of the Public Health Code, or a local health department as defined in section 1105 of the Public Health Code.

Unless a disability and a disability-related need for an emotional support animal were readily apparent, a housing provider could request reliable documentation from an individual's health care provider to confirm that the individual has a disability and to specifically explain the relationship between his or her disability and the need for an emotional support animal. An emotional support animal registration—such as an identification card, patch, certificate, or similar registration obtained for a service animal—would not satisfy this documentation requirement.

If an individual living in a dwelling provided or regulated by a housing provider falsely represented that an animal kept on the leased premises was an emotional support animal, the housing provider could terminate the individual's lease or tenancy and recover possession of the premises (i.e., evict the individual).

Health Care Providers

The bill would prohibit a health care provider that determines an individual's need for an emotional support animal from falsely representing that an individual has been diagnosed with a disabling mental, emotional, psychological, or psychiatric condition or illness and must use an emotional support animal to alleviate their disabling effects.

A health care provider that determines the need for an emotional support animal would have to meet the following requirements:

- The provider must be licensed in this state or in another state.
- The provider must maintain a physical office space where patients are regularly treated and where the individual seeking certification of the need for an emotional support animal has been examined and treated. If the provider's primary office is in another state, the provider must have provided treatment to the individual seeking an emotional support animal during the previous 180 days.

¹ "Service animal" is defined in that act as any guide dog, signal dog, or miniature horse that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

- The provider cannot receive a fee or other compensation from any source solely for certifying an individual’s need for an emotional support animal. Documentation issued by a health care provider who received compensation solely for providing the documentation would be invalid.
- Upon request by a housing provider, the health care provider must provide documentation, in the form of a notarized letter or completed and notarized questionnaire, establishing the following:
 - That the health care provider has treated the individual and meets the conditions for a bona fide physician-patient relationship provided in section 3(a)(1) and (2) of the Michigan Medical Marihuana Act.²
 - The dates and locations where the health care provider provided treatment to the individual.
 - That the individual is a person with a disability.
 - The disabling effects of the condition or illness.
 - The relationship between those disabling effects and the need for the emotional support animal.
 - The manner in which the emotional support animal provides the individual with the same opportunity to use and enjoy the dwelling as a nondisabled person would have.
 - That the health care provider did not receive a fee or other compensation solely for providing the documentation.
- If requested by a housing provider, provide the above documentation annually.

The documentation described above would be subject to the privacy provisions of the federal Health Insurance Portability and Accountability Act (HIPAA).

Penalties

An individual or health care provider who knowingly violated the new act would be guilty of a misdemeanor punishable by one or more of the following:

- Imprisonment for up to 90 days.
- A fine of up to \$500.
- Community service for up to 30 days.

Department of Civil Rights Hotline

Under the bill, the Michigan Department of Civil Rights (MDCR) would have to establish a telephone complaint hotline, either currently existing or specifically created for the purposes of the act, to receive any of the following:

- Reports of an individual who is falsely representing that he or she is in possession of an emotional support animal.
- Reports of a health care provider that is falsely representing that an individual is in need of an emotional support animal.
- Complaints from a tenant or prospective tenant in regard to obtaining permission from a housing provider to keep an emotional support animal on the leased premises.

² Namely, it would have to be a treatment or counseling relationship between a physician and patient in which (1) the physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient, and (2) the physician has created and maintained records of the patient's condition in accord with medically accepted standards.

MDCR could then refer an alleged violation of the act to the appropriate law enforcement agency for investigation.

House Bill 4911 would amend the RJA to allow housing providers to recover possession of residential property after the termination of a lease under HB 4910. The bill would also add the violation of HB 4910 by a tenant or a member of the tenant’s household to the statutory list of “just causes” for the termination of tenancy in a mobile home park.

MCL 600.5714 and 600.5775

Each bill is tie-barred to the other, which means that neither could take effect unless both were enacted.

BACKGROUND INFORMATION:

House Bill 4910 is similar to Senate Bill 663 of the 2017-18 legislative session, which was passed by the Senate. That bill, however, amended 1981 PA 82, which prohibits falsely purporting to have a service animal in public, to add emotional support animals to the scope of that act and to prohibit falsely representing the need for a service or emotional support animal to a current or prospective landlord.

FISCAL INFORMATION:

House Bill 4910 would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

The bill would not have a significant fiscal impact on MDCR. The anticipated use of the proposed hotline for reporting misrepresentation of emotional support animals would likely be able to be supported by current resources and staffing for MDCR’s existing reporting hotline. The bill would also not have an appreciable fiscal impact on the Department of State Police or on other law enforcement agencies.

House Bill 4911 would have no fiscal impact on state or local government.

ARGUMENTS:

For:

Supporters of the bills argue that they represent a necessary fix to combat a growing problem for housing providers. People who fraudulently claim that their pets are emotional support animals are taking advantage of the system, causing headaches—and sometimes even property damage and lost business—for housing providers. This abuse also puts people who actually need these animals in a tough spot, as they are often accused of being frauds themselves and may have difficulty finding housing as a result. Supporters of the bills argue that providing a

clear, simple process to confirm the validity of prescriptions for emotional support animals would address these problems.

Against:

Opponents of the bills do not disagree that there are problems with people fraudulently claiming that their pets are emotional support animals. Rather, they argue that the bills would violate federal fair housing laws and undermine the rights of the disabled. The bills would impose conditions on verification of prescriptions for health care providers for disabled people, which could increase their premiums and make it more difficult for them to obtain coverage. Opponents of the bills argue that they are an overreaction to a relatively small problem that would in the process create barriers to finding housing for the disabled.

POSITIONS:

Representatives of the Property Management Association of Michigan testified in support of the bills. (12-10-19)

The following entities indicated support for the bills:

- Rental Property Owners Association of Michigan (3-3-20)
- Apartment Association of Michigan (3-3-20)
- Home Builders Association of Southeastern Michigan (12-10-19)
- National Federation of Independent Business (12-10-19)
- Community Association Institute – Michigan Chapter (10-22-19)
- Detroit Metropolitan Apartment Association (12-10-19)
- Washtenaw Area Apartment Association (3-3-20)
- PMA Mid-Michigan (3-3-20)
- Central Park Apartments (3-3-20)
- Runaway Bay Apartments (10-22-19)
- Club Meridian Apartments (10-22-19)
- Delta River Senior Village (10-22-19)
- Somerset Park Apartments (10-22-19)
- KMG Prestige, Inc. (3-3-20)
- Central Park Place Apartments (10-22-19)
- DTN Management (10-22-19)
- Smart Moves (10-22-19)
- AMP Residential (3-3-20)
- Midtown Apartments (10-22-19)
- Legacy, LLC (10-22-19)
- Hagan Realty, Inc. (10-22-19)
- Byrum and Fisk (10-22-19)
- Woodbridge Manor (10-22-19)
- Fountain Place Apartments (10-22-19)
- Land and Company Apartments (3-3-20)
- Michigan Manufactured Housing Association (12-10-19)
- Princeton Enterprises (3-3-20)
- Smart Apartment Solutions (3-3-20)
- Monarch Investment Group (3-3-20)

The Department of Civil Rights indicated a neutral position on the bills. (12-10-19)

Representatives of the following entities testified in opposition to the bills (12-10-19):

Michigan Poverty Law Program
Humane Society of Huron Valley
Attorneys for Animals

A representative of the Michigan Academy of Family Physicians testified in opposition to HB 4910. (12-10-19)

The following entities indicated opposition to the bills:

Michigan Elder Justice Initiative (12-9-19)
Michigan State Medical Society (3-3-20)
Michigan Disability Rights Coalition (12-9-19)
National Association of Social Workers – Michigan Chapter (12-9-19)
Brain Injury Association of Michigan (12-10-19)
Michigan Academy of Family Physicians (3-3-20)
Center for Civil Justice (3-3-20)
Fair Housing Center of Metropolitan Detroit (12-9-19)
Fair Housing Center of Southeast-Mid Michigan (12-9-19)
Fair Housing Center of West Michigan (12-9-19)
The Arc Michigan (3-3-20)
Michigan Protection & Advocacy Service, Inc. (12-9-19)
Mental Health Association of Michigan (12-10-19)
Humane Society of the United States (12-10-19)
Michigan Academy of Physician Assistants (12-10-19)
Michigan Pet Fund Alliance (12-10-19)
Detroit Disability Power (12-9-19)
Disability Advocates of Kent County (12-9-19)
Disability Network Southwest Michigan (12-9-19)
Fair Housing Center of Southwest Michigan (12-9-19)
Michigan Developmental Disabilities Council (12-9-19)
Washtenaw County Shelter Association (12-10-19)
Michigan Coalition Against Homelessness (12-10-19)
Michigan Psychiatric Society (3-3-20)
Michigan Osteopathic Association (3-3-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.