

Legislative Analysis



MISREPRESENTATION OF EMOTIONAL SUPPORT ANIMALS ACT

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<http://www.house.mi.gov/hfa>

House Bill 4910 (H-1) as referred to second committee
Sponsor: Rep. Matt Hall

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

House Bill 4911 as referred to second committee
Sponsor: Rep. Sara Cambensy

1st Committee: Regulatory Reform
2nd Committee: Judiciary
Revised 12-9-19

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 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.

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 confirming that the individual has a disability and indicating 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 also prohibit a ***health care provider*** that prescribes 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.

Health care provider would mean a health professional licensed under Article 15 of the Public Health Code, a health facility or agency licensed under Article 17 of that act, or a local health department as defined in section 1105 of that act.

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

- Be licensed in this state or in the state in which the individual resides or resided during the previous 180 days.
- Maintain a physical office space where patients are regularly treated and where the individual for whom an emotional support animal was prescribed received treatment during the previous 180 days.
- Upon request by a housing provider, 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 for a period of at least six months immediately preceding the date the documentation was requested.
 - 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.
- 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 use a telephone complaint hotline, either currently existing or specifically created for the purposes of the act, to receive reports of an individual who is falsely representing that he or she is in possession of an emotional support animal or reports of a health care provider that is falsely representing that an individual is in need of an emotional support animal. 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. (10-22-19)

The following entities indicated support for the bills (10-22-19):

- Rental Property Owners Association of Michigan
- Apartment Association of Michigan
- Home Builders Association of Southeastern Michigan
- National Federation of Independent Business
- Community Association Institute – Michigan Chapter
- Detroit Metropolitan Apartment Association
- Washtenaw Area Apartment Association
- PMA Mid-Michigan
- Central Park Apartments
- Runaway Bay Apartments
- Club Meridian Apartments
- Delta River Senior Village
- Somerset Park Apartments
- KMG Prestige, Inc.

Central Park Place Apartments
DTN Management
Land and Company Apartments
Smart Moves
AMP Residential
Midtown Apartments
Legacy, LLC
Hagan Realty, Inc.
Byrum and Fisk
Woodbridge Manor
Fountain Place Apartments
Land and Company Apartments

A representative of the Michigan Poverty Law Program testified in opposition to the bills.
(10-22-19)

The following entities indicated opposition to the bills (10-22-19):

Michigan Elder Justice Initiative
Michigan State Medical Society
Michigan Disability Rights Coalition
National Association of Social Workers Michigan
Brain Injury Association of Michigan
Michigan Academy of Family Physicians
Center for Civil Justice
Fair Housing Center of Metropolitan Detroit
Fair Housing Center of Southeast and Mid Michigan
Fair Housing Center of West Michigan
The Arc Michigan
Michigan Protection & Advocacy Service, Inc.

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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.