



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 4910 (Substitute H-4 as passed by the House)  
House Bill 4911 (as passed by the House)  
Sponsor: Representative Matt Hall (H.B. 4910)  
Representative Sara Cambensy (H.B. 4911)  
House Committee: Regulatory Reform  
Judiciary  
Senate Committee: Regulatory Reform

Date Completed: 9-22-20

**CONTENT**

**House Bill 4910 (H-4) would enact the "Misrepresentation of Emotional Support Animals Act" to do the following:**

- Prohibit an individual from falsely representing to a housing provider that he or she was disabled or was in possession of an emotional support animal.
- Allow a housing provider to request an individual seeking a reasonable accommodation for an emotional support animal to sign a valid authorization consistent with the privacy provisions of HIPAA, so that the provider could request documentation from that individual's health care provider.
- Allow a housing provider to require documentation from an individual's health care provider to be provided annually.
- Specify the format and type of information that documentation from a health care provider would have to include.
- Prohibit a health provider from falsely representing that an individual had been diagnosed with a disability and required the use of an emotional support animal.
- Establish certain requirements for a health provider that determined an individual needed an emotional support animal.
- Require a health care provider and an individual seeking a reasonable accommodation for an emotional support animal to have a bona fide provider-patient relationship.
- Specify that an individual who knowingly violated the proposed Act would be guilty of a misdemeanor and prescribe penalties for a violation.
- Allow a housing provider to terminate the tenancy of an individual who falsely represented that an animal kept on the premises was an emotional support animal and to recover the premises through summary proceedings.

**House Bill 4911 would amend Chapter 57 (Summary Proceedings to Recover Possession of a Premises) of the Revised Judicature Act to allow a housing provider to recover possession of a premises by summary proceedings after termination of a lease under the proposed Misrepresentation of Emotional Support Animals Act.**

House Bills 4910 and 4911 are tie-barred.

## **House Bill 4910 (H-4)**

### Definitions

"Emotional support animal" would mean a 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 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.

"Person with a disability" would mean an individual who has a disability as that term is defined in Section 3 of the Americans with Disabilities Act.

"Housing provider" would mean a person, including a community association or a private or public business, that is subject to Fair Housing laws and that offers, provides, or regulates the use of a dwelling.

"Dwelling" would mean a building or structure, or any portion of a building or structure, that is occupied as or designed or intended for occupancy as a residence, including, but not limited to, 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.

"Community association" would mean an incorporation or unincorporated cooperative, condominium association, homeowner's association, or summer resort association.

### Prohibit Misrepresentation of Disability & Need for Emotional Support Animal

The Act would prohibit an individual from falsely representing to a housing provider that he or she was a person with a disability or was in possession of and required the assistance of an emotional support animal.

Unless a disability and a disability-related need for an emotional support animal were readily apparent, a housing provider could require an individual seeking a reasonable accommodation for an emotional support animal to sign a valid authorization consistent with the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), so that the housing provider could request documentation for an individual's health care provider to confirm that the individual was a person with a disability and to specifically explain the relationship between the individual's disability and the need for an emotional support animal.

"Health care provider" would mean any of the following:

- A physician, physician's assistant, nurse practitioner, or certified nurse specialist licensed under Article 15 (Occupations) of the Public Health Code, or a physician, physician's assistant, nurse practitioner, or certified nurse specialist licensed in another state.
- A mental health professional as that term is defined in Section 100b of the Mental Health Code, or a mental health professional licensed in another state.
- A health facility or agency licensed under Article 17 (Facilities and Agencies) of the Public Health Code.
- A local health department as that term is defined in Section 1105 of the Public Health Code.

The Act would prohibit a health care provider from falsely representing that an individual had been diagnosed with a disabling mental, emotional, psychological, psychiatric condition or illness and required the use of an emotional support animal to alleviate the disabling effects of that condition or illness.

#### Health Care Provider Requirements

All the following would apply to a health care provider that determined an individual's need for an emotional support animal:

- The health care provider would have to be licensed in Michigan or another state.
- The health care provider would have to maintain a physical office space where patients were regularly treated and where the individual who sought certification of the need for an emotional support animal had been examined and treated.
- If the health care provider's primary office were in another state, the provider would have to provide treatment to the individual seeking an emotional support animal for at least the previous 180 days.
- The health care provider could not receive a fee or any other form of compensation solely in exchange for determining an individual's need for an emotional support animal; documentation issued by a provider who received compensation from any source solely for providing that documentation would be invalid.

After receiving a valid authorization, the health care provider would have to provide documentation that established that the provider and the individual had a bona fide provider-patient relationship. "Bona fide provider-patient relationship" would mean a treatment or counseling relationship in which a health care provider does all of the following:

- Reviews the patient's relevant medical records and completes a full assessment of the patient's medical history and current medical condition, including relevant, in-person, medical evaluation of the patient.
- Creates and maintain records of the patient's condition in accordance with medically accepted standards.
- Reasonably expects that he or she will provide follow-up care to the patient to monitor the efficacy of the use of an emotional support animal as a treatment of the patient's disability.

The documentation also would have to establish the following:

- The dates and locations where the health care provider provided treatment to the individual.
- That the individual was a person with a disability.
- The disabling effects of the condition or illness.
- The relationship between the disabling effects of the condition or illness described by the provider and the need for the emotional support animal.
- The manner in which the emotional support animal provided the person with a disability with the same opportunity to use and enjoy the dwelling as would a nondisabled person.
- That the health care provider had not received a fee or any other compensation solely in exchange for determining an individual's need for an emotional support animal.

The document provided by the health care provider would have to be in the form of a letter or a completed questionnaire and would be subject to the privacy provisions of HIPAA. If requested by a housing provider, the health care provider would have to provide the letter or questionnaire on an annual basis.

An emotional support animal registration of any kind, including an identification card, patch, or certificate, or a similar registration that was obtained for a service animal under Public Act 146 of 2015 (which provides for the issuance of identification and patches for service animals) would not satisfy the documentation requirements of the Act.

### Penalties

An individual or health care provider who knowingly violated the Act would be guilty of a misdemeanor punishable by one or more of the following: a) imprisonment for up to 90 days; b) a fine of up to \$500; c) community service for no more than 30 days.

If an individual who resided in a dwelling leased or otherwise provided or regulated by a housing provider falsely represented that an animal kept on the premises was an emotional support animal, the housing provider could terminate the lease, or otherwise terminate the tenancy of the individual, and recover possession of the premise under Section 5714 or Section 5775 of the Revised Judicature Act. (Those sections allow for recovery of a premises through summary proceedings, and termination of a tenancy in a mobile home park, respectively.)

### Telephone Hotline

The Department of Civil Rights 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 was falsely representing that he or she was in possession of an emotional support animal
- Reports of a health care provider that falsely represented that an individual needed an emotional support animal.
- Complaints from a tenant or prospective tenant regarding obtaining permission for a housing provider to keep an emotional support animal on the leased premise.

The Department could refer an alleged violation of the Act to the appropriate law enforcement agency for investigation.

## **House Bill 4911**

Chapter 57 of the Revised Judicature Act allows a person entitled to possession of premises to recover possession by summary proceedings (i.e., a civil action filed in a district court to recover the premises and obtain other relief, as appropriate) under certain circumstances, including when a person holds over premises after termination or expiration of a lease, or for failing or refusing to pay rent under a lease. The bill also would allow a person entitled to possession of premises to recover possession through summary proceedings after termination of a lease under the proposed Misrepresentation of Emotional Support Animals Act.

Chapter 57 also prohibits the tenancy of a tenant in a mobile home park from being terminated unless there is just cause for the termination. "Just cause" is defined as one or more of a list of circumstances, for example, the use of a mobile home site by the tenant for an unlawful purpose. Under the bill, "just cause" would include a violation by the tenant or a member of the tenant's household of the Misrepresentation of Emotional Support Animals Act.

MCL 600.5714 et al. (H.B. 4911)

Legislative Analyst: Dana Adams

## **FISCAL IMPACT**

### **House Bill 4910 (H-4)**

The bill would have a negative fiscal impact on State and local government. New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under bill's provisions. Any additional revenue from imposed fines would go to local libraries.

The bill also would require the Department of Civil Rights to maintain a telephone complaint hotline. The Department has indicated that its current toll-free hotline should be sufficient to comply with the bill's requirement. Any additional costs are expected to be minimal and likely would be absorbed within current appropriations. However, should the Department be required to do more than forward the information to local law enforcement (e.g., investigations or enforcement) there could be additional costs, which would require additional funding. These potential additional costs are indeterminate and would depend on the nature of any additional responsibilities beyond reporting to local law enforcement.

### **House Bill 4911**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco  
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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.