

CREATE EMOTIONAL SUPPORT ANIMAL ACT

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House Bill 5751 (proposed substitute H-1)

Sponsor: Rep. Sara Cambensy

1st Committee: Regulatory Reform

2nd Committee: Judiciary

Complete to: 6-6-22

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

SUMMARY:

House Bill 5751 would create a new act, the Emotional Support Animal Act, which would provide a process through which a *person with a disability* can be certified by a *health care provider* as needing an *emotional support animal*.

Person with a disability would mean an individual who has a handicap, as that term is defined in section 802(h) of the federal Fair Housing Act, 42 USC 3602, and 24 CFR 100.201, or an individual who has a disability as that term is defined in section 103 of the Persons with Disabilities Civil Rights Act.¹

Health care provider would mean any of the following:

- A physician or physician's assistant licensed under Article 15 of the Public Health Code.
- A nurse practitioner licensed as a registered professional nurse, and granted a specialty certification as a nurse practitioner by the Michigan Board of Nursing, under Part 172 of the Public Health Code.
- A clinical nurse specialist licensed as a registered professional nurse, and granted a specialty certification as a clinical nurse specialist by the Michigan Board of Nursing, under Part 172 of the Public Health Code.
- A mental health professional, defined in section 100b of the Mental Health Code as an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is one of the following:
 - A physician.
 - A psychologist.
 - A registered professional nurse licensed or otherwise authorized to engage in the practice of nursing under Part 172 of the Public Health Code.
 - A licensed master's social worker licensed or otherwise authorized to engage in the practice of social work at the master's level under Part 185 of the Public Health Code.
 - A licensed professional counselor licensed or otherwise authorized to engage in the practice of counseling under Part 181 of the Public Health Code.
 - A marriage and family therapist licensed or otherwise authorized to engage in the practice of marriage and family therapy under Part 169 of the Public Health Code.

¹ See <https://www.law.cornell.edu/uscode/text/42/3602>, <https://www.law.cornell.edu/cfr/text/24/100.201>, and <http://legislature.mi.gov/doc.aspx?mcl-37-1103>

Emotional support animal would mean an animal that qualifies as a reasonable accommodation that is necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling or residential property as described under section 804(f)(3)(B) of the Fair Housing Act, 42 USC 3604, or section 506a(1)(b) of the Persons with Disabilities Civil Rights Act.²

Service animal would mean a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.³

The bill would allow a health care provider who meets both of the following to certify a person with a disability's need for an emotional support animal:

- The health care provider has an established **provider-patient relationship** with the person with a disability for at least 30 days before the health care provider certifies the person with a disability's need for an emotional support animal.
- The health care provider determines that the person with a disability has a need for an emotional support animal.

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 a relevant medical evaluation of the patient either in person or via telehealth.
- Creates and maintains records of the patient's current medical condition in accordance with medically accepted standards.
- Reasonably expects to provide the patient with follow-up medical care to monitor the efficacy of the use of an emotional support animal as a treatment of the patient's disability.

The certification would have to be in the form of a letter or a completed questionnaire and would be subject to the privacy provisions of the federal Health Insurance Portability and Accountability Act (HIPAA).

The bill would prohibit a health care provider from receiving a fee or other form of compensation for the sole action of certifying an emotional support animal. If a fee or other compensation were exchanged solely for that purpose, the certification would be invalid. A health care provider also would be prohibited from falsely certifying a person with a disability's need for an emotional support animal.

The bill also requires a person that sells or offers for sale in Michigan a registration of any kind, such as an identification card, patch, tag, vest, harness, or a certificate, indicating that an animal is an emotional support animal to provide written notice to a buyer upon purchase that states both of the following:

- That the registration does not qualify the animal as a service animal.
- That falsely representing an animal as a service animal or a service animal in training violates 1981 PA 82.

² See <https://www.law.cornell.edu/uscode/text/42/3604> and <http://legislature.mi.gov/doc.aspx?mcl-37-1506a>

³ See <https://www.law.cornell.edu/cfr/text/28/36.104>

Violations of the act could be prosecuted by a county prosecutor or the attorney general. A person that knowingly violated the act could be ordered to pay a civil fine of up to \$1,000 for a first offense and up to \$2,000 for a second or subsequent offense.

FISCAL IMPACT:

House Bill 5751 would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of individuals found to be in violation and subsequently ordered to pay a civil fine under provisions of the bill. Civil fine revenue is dedicated to public and county law libraries. A small portion of the revenue is typically deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. We do not have a practical way to determine the number of civil fines that would be ordered or to estimate the amount of revenue that would be derived from payment of civil fines.

In addition, depending on the extent of violations concerning emotional support animals and the need for enforcement, the bill could result in additional caseloads to local prosecutors and the Department of Attorney General and added costs if existing attorney and support staffing is unable to absorb the increase.

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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.