

## EMOTIONAL SUPPORT ANIMAL ACT

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**House Bill 5751 (H-1) as reported from committee**

**Sponsor: Rep. Sara Cambensy**

**1st Committee: Regulatory Reform**

**2nd Committee: Judiciary**

**Revised 9-26-22**

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

**BRIEF 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.

**FISCAL IMPACT:** House Bill 5751 would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

### **THE APPARENT PROBLEM:**

According to committee testimony, landlords and property managers have seen a marked increase in the number of requests for emotional support animal accommodations in rental properties that do not allow animals on the premises. These accommodations are allowed under the Americans with Disabilities Act. According to individuals in the rental property industry, however, many of the new requests are being submitted by individuals who do not have a legitimate need. As an example, one industry representative shared their experience utilizing an online service that generates letters from medical professionals certifying the applicant as needing an emotional support animal, despite the applicant's not having a prior relationship or full examination with that professional. Landlords and property managers believe that they do not have the authority under existing law to refuse the accommodation requests made by individuals receiving letters from medical professionals, even when the letter is drafted by a medical professional from an online service. Legislation has been offered to address this situation.

### **CONTENT OF THE BILL:**

House Bill 5751 would create 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.<sup>1</sup>

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<sup>1</sup> 42 USC 3602: <https://www.law.cornell.edu/uscode/text/42/3602>

24 CFR 100.201: <https://www.law.cornell.edu/cfr/text/24/100.201>

Section 103 of the Persons with Disabilities Civil Rights Act: <http://legislature.mi.gov/doc.aspx?mcl-37-1103>

**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, which section 100b of the Mental Health Code defines 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.

**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.<sup>2</sup>

**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.<sup>3</sup>

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.

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<sup>2</sup> 42 USC 3604: <https://www.law.cornell.edu/uscode/text/42/3604>

Section 506a of the Persons with Disabilities Civil Rights Act: <http://legislature.mi.gov/doc.aspx?mcl-37-1506a>

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

***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.

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.

***BACKGROUND:***

The bill is similar to House Bills 4910 and 4911 of the 2019-20 legislative session,<sup>4</sup> which were passed by the House and Senate but vetoed by the governor.<sup>5</sup>

***FISCAL INFORMATION:***

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

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<sup>4</sup> <http://legislature.mi.gov/doc.aspx?2019-HB-4910>

<sup>5</sup> [https://content.govdelivery.com/attachments/MIEOG/2020/12/30/file\\_attachments/1636348/HB%204910%20and%204911%20Veto%20Letter.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/12/30/file_attachments/1636348/HB%204910%20and%204911%20Veto%20Letter.pdf)

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.

***ARGUMENTS:***

***For:***

Supporters of the bill say the regulations it would impose on obtaining an accommodation for an emotional support animal are needed to prevent anyone from obtaining such an accommodation, despite their lack of medical need, to skirt rental property prohibitions on keeping animals on the rental premises. Proponents add that these regulations would not keep those with legitimate need of an emotional support animal from obtaining one, but would only keep fraudulent claims in check.

***Against:***

Critics of the bill say that the needed authority for landlords and property managers to refuse an accommodation request already exists under federal guidance that outlines the accommodation process and the obligations of landlords and property managers in regard to accessible housing. Opponents say the bill would make it tougher for those who genuinely need emotional support animals to obtain the needed accommodation.

***POSITIONS:***

Representatives of the following entities testified in support of the bill:

- Property Management Association of Michigan (6-7-22)
- Next Door Properties (5-10-22)
- Esker Properties (5-10-22)
- Hagan Realty, Inc. (5-10-22)
- Princeton Enterprises (6-7-22)

The following indicated support for the bill:

- Rental Property Owners Association of Michigan (6-7-22)
- Washtenaw Area Apartment Association (6-7-22)
- Homebuilders Association of Southeastern Michigan (5-10-22)
- Northern Michigan University (5-10-22)
- Hudgins Realty (6-7-22)
- Prime Housing Group (6-7-22)
- AMP Residential (6-7-22)
- Koetje Communities (6-7-22)
- PMA Mid Michigan (6-7-22)
- Pine Ridge Apartments, Rochester Hills (6-7-22)
- Campus Management, Inc. (6-7-22)

- PK Companies (6-7-22)
- The Associated Management Company (5-10-22)
- Legacy Resources (6-7-22)
- Apartment Association of Michigan (6-7-22)
- Property Management Association of Mid-Michigan (6-7-22)

Representatives of the following entities testified in opposition to the bill:

- Michigan Department of Civil Rights (6-7-22)
- Fair Housing Center of Metro Detroit (5-10-22)
- Michigan Poverty Law Program (5-10-22)

The following entities indicated opposition to the bill:

- State Bar of Michigan Elder Law & Disability Rights Section (6-4-22)
- Fair Housing of Western Michigan (6-7-22)
- Fair Housing Center of Southeast & Mid Michigan (5-10-22)

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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.