

Legislative Analysis



SERVICE ANIMALS FOR PERSONS WITH DISABILITIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 298 (reported from House committee as H-1)
Sponsor: Sen. David Knezek

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

Senate Bill 299 (reported without amendment)
Sponsor: Sen. Margaret E. O'Brien

House Bill 4521 (passed by the House)
Sponsor: Rep. Tom Barrett

House Bill 4527 (passed by the House)
Sponsor: Rep. David Rutledge

House Committee: Military and Veterans Affairs
Senate Committee: Veterans, Military Affairs, and Homeland Security
Complete to 9-14-15

SUMMARY:

Senate Bills 298 and 299 are part of a four-bill package with House Bills 4521 and 4527. The House bills have passed the House and are currently in the Senate Committee on Veterans, Military Affairs and Homeland Security. The Senate bills have been reported by the House Committee on Military and Veterans Affairs and are before the full House.

All of the bills deal with service animals for persons with disabilities, including certain veterans. Each bill contains the same new definitions of "service animal," "a person with disabilities," and "veteran." Various references to service dogs (such as guide or leader dogs) and references to specific disabilities (such as blind, audibly impaired, or physically limited individuals) would be eliminated. Also eliminated would be references to certain leashes, collars, capes, and backpacks, which currently identify service dogs. Service animals would now include miniature horses. The four bills are tie-barred to one another, meaning none can take effect unless all are enacted. The bills would take effect 90 days after being enacted into law. A detailed explanation of all four bills follows.

Senate Bill 298 would amend the Michigan Penal Code to do all of the following:

- Change various terms and definitions in provisions that involve the mistreatment of an animal used by a person with a disability.
- Require a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability.
- Require a public accommodation to make reasonable modifications in its policies, practices, and procedures to permit the use of a miniature horse by a person with a disability.

Terms and Definitions

Under the code an individual is prohibited from willfully and maliciously assaulting, beating, or harassing a dog that he or she knows or has reason to believe is a guide or leader dog for a blind individual, a hearing dog for a deaf or audibly impaired individual, or a service dog for a physically limited person. The code also prohibits impeding or interfering with the duties of a guide, hearing, or service dog. The bill would refer to a person with a disability rather than a blind, deaf or audibly impaired, or physically limited individual. Where the Penal Code refers to a guide, leader, hearing, or service dog, the bill would refer instead to an animal used by a person with a disability.

"Person with a disability" would be defined to mean a person who has a disability as defined in the Americans with Disabilities Act: a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such an impairment.

Under the bill, the term "person with a disability" would also include a veteran who has been diagnosed with post-traumatic stress disorder, traumatic brain injury, and/or other service-related disabilities. "Veteran" would mean: (a) a person who performed military service in the armed forces for a period of more than 90 days and separated from the armed forces in a manner other than a dishonorable discharge; (b) a person discharged or released from military service because of a service-related disability; or (c) a member of a reserve branch of the armed forces at the time of being ordered to military service during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and who was released from military service in a manner other than a dishonorable discharge.

"Service animal" would mean that term as defined in the Americans with Disabilities Act (which refers to "any dog 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", and excludes other breeds of animals) and (2) a miniature horse that has been individually trained to do work or perform tasks as described in the Americans with Disabilities Act for the benefit of a person with a disability.

Public Accommodations: Modifications for Service Animals & Miniature Horses

Currently, it is a misdemeanor for a person who is the owner, lessee, proprietor, manager, agent, or employee of any place of public or private housing, accommodation, amusement, or recreation to refuse to permit a person with a disability or a trainer of service animals to enter or use the place, if the animal is wearing a blaze orange leash and collar or a harness, hearing dog cape, or service dog backpack, and the person with a disability, or trainer, possesses a pictured identification card certifying that the dog was trained by a qualified organization or that the person is the trainer. The bill would delete those provisions.

The bill would instead require a public accommodation to modify its policies, practices, and procedures to permit the use of a service animal by a person with a disability, and to make reasonable modifications in its policies, practices, and procedures to permit the use of a miniature horse by a person with a disability. If the service animal is a miniature horse, the public accommodation could use the following assessment factors to determine whether the miniature horse can be accommodated at the facility:

- The type, size, and weight of the miniature horse and whether the facility could accommodate those features.
- Whether the handler had sufficient control of the miniature horse.
- Whether the miniature horse was housebroken.
- Whether the miniature horse's presence in the facility would compromise legitimate and necessary safety requirements.

A public accommodation could not ask a person with a disability to remove a service animal from the premises because of allergies or fear of the animal. It could only ask a person with a disability to remove his or her service animal if either of the following apply: (1) the service animal is out of control and its handler does not take effective action to control it, and (2) if the service animal is not housebroken.

Management of Service Animals

A service animal or miniature horse would have to be under the control of its handler and have a harness, leash, or other tether unless the handler is unable to use a harness, leash or other tether because of a disability; or such use would interfere with the service animal's safe and effective performance, work, or tasks, in which case the service animal or miniature horse would have to be otherwise under the handler's control. The term "otherwise under the handler's control" would include, but not be limited to, voice control or signals. A public accommodation would not be responsible for the care or supervision of a service animal.

If a public accommodation properly excluded a service animal or miniature horse, it would need to give a person with a disability the opportunity to obtain goods, services or accommodation without having it on the premises.

Public Accommodation Prohibitions

If it is not obvious what service a service animal provides, staff of a public accommodation could not ask about a person with a disability's disability, require medical documentation, a special identification card or training documentation for the service animal, or ask that the animal demonstrate its ability to perform work or a task. However, staff could make the following two inquiries to determine whether an animal qualified as a service animal: (1) whether the animal is required because of a disability and (2) what work or tasks the animal has been trained to perform.

A public accommodation could not require documentation or make an inquiry if it was readily apparent that the service animal was trained to do work or perform tasks for an individual with a disability.

A person with a disability would have to be allowed to be accompanied by the service animal in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees were permitted to go, including public areas of establishments that see or prepare food, even if state or local health codes prohibit animals on the premises. However, a public accommodation could exclude a service animal from a facility if the animal's presence interferes with legitimate safety requirements of the facility such as a surgery or burn unit in a hospital in which a sterile field is required.

A public accommodation could not isolate a person with a disability accompanied by his or her service animal, treat that person less favorably than other patrons, or charge a fee that is not charged to other patrons without service animals.

A public accommodation could not ask or require a person with a disability to pay a surcharge, regardless of whether people with pets are required to pay a surcharge, or to comply with other requirements that are not applicable to people without pets. If a public accommodation normally charges people for damage caused, it could charge a person with a disability for damage caused by a service animal.

A public accommodation in violation of any provision stated would be guilty of a misdemeanor. (Under the Penal Code, a misdemeanor for which no penalty is specified is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.)

Senate Bill 299 would amend Public Act 207 of 1970. That act exempts a dog from any fee for licensing if: (1) the dog is used as a guide or leader dog for a blind person, a hearing dog for a deaf or audibly impaired person, or a service dog for a physically limited person, or (2) the dog is owned by a partnership, corporation, or other legal entity that trains dogs for those purposes. Where the act now refers to a blind, deaf or audibly impaired, or physically limited individual, the bill would refer to a person with a disability. Where the act refers to a guide or leader, hearing, or service dog, the bill would instead refer to a service animal. "Person with a disability," "service animal," and "veteran" would be defined as those terms would be defined in Senate Bill 298.

Companion House Bills

House Bill 4521 would create a new act to require the Department of Civil Rights to develop and make available voluntary identification, tags, and vests for a service animal for a person with a disability. The bill uses the same definitions of "person with a disability," "service animal," and "veteran" as in the other bills.

Eligibility. To be eligible to receive the voluntary identification, tag, and vest, the person seeking the materials would need to provide a signed affidavit attesting that the service animal has been trained to be a service animal, and provide documentation from an appropriate health care or rehabilitation professional that the individual requires the assistance of the service animal due to a disability.

Complaint Hotline. The department would have to use its existing telephone complaint hotline to receive reports of problems encountered by a person using a service animal and to receive reports of a person impersonating a person with a disability and using a service animal.

Penalty for False/Fraudulent Affidavit. A person who knowingly and willingly submits a false or fraudulent affidavit would be guilty of a misdemeanor punishable by one or more of the following: imprisonment for up to 90 days; a fine of not more than \$500; and/or community service for up to 30 days.

House Bill 4527 would amend Public Act 82 of 1981, which is currently described as "an act to prohibit the use of certain collars or harnesses and leashes on dogs in public places" (MCL 752.61 et al.). It would add the new definitions described above.

The bill would rewrite the act to describe it as "an act to prohibit a person from representing that he or she is in possession of a service animal in public places unless that person is a person with a disability." The specific offense under the bill would be for a person to falsely represent that he or she is in possession of a service animal or service animal in training in any public place.

Currently, the prohibition applies to using or being in possession of a dog wearing a blaze orange leash and collar or harness without having certain specified disabilities. Those references would be eliminated.

Currently, a violation of the act is a misdemeanor punishable by a fine of not more than \$10. Under the bill, a violation would continue to be a misdemeanor, but a violation could be punished by one or more of the following: imprisonment for up to 90 days; a fine of not more than \$500; and/or community service for up to 30 days.

FISCAL IMPACT:

Senate Bills 298 and 299 would have a negligible fiscal impact on state and local government. There could be a minimal impact on local governments potentially losing some revenue with the exemption of service animal license fees being expanded to miniature horses. Local governments could see marginal increased revenue from any resulting misdemeanor fines that would be assessed, as misdemeanor fines go to public libraries.

House Bill 4521 would have an increased fiscal impact on state government. The Michigan Department of Civil Rights (MDCR) would face increased costs in providing vests, tags, and IDs for service animals, as well as increased costs in processing complaints submitted around the use of service animals. According to MDCR estimates, one-time costs would include the purchase of equipment to design and produce ID tags, the actual design of the tag, design of an online registry, and the purchase of vests and tags for distribution, totaling \$66,000. The department also estimates an additional 2.0 FTEs would be needed for processing, which would add \$200,000 in ongoing cost to the department.

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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.