

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1159.01 Thomas Morris x4218

HOUSE BILL 16-1426

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HOUSE SPONSORSHIP

Primavera and Willett,

SENATE SPONSORSHIP

(None),

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House Committees

Public Health Care & Human Services

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING INTENTIONAL MISREPRESENTATION OF ENTITLEMENT TO  
102 AN ASSISTANCE ANIMAL.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Federal law requires that reasonable accommodations be provided under some circumstances to individuals with a disability. An "assistance animal", sometimes referred to as an "emotional support animal", can assist individuals with a disability with their condition but is not necessarily trained to provide a specific task as "service animals" are. Certain providers of housing must allow an individual with a disability to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

reside with his or her assistance animal without charging any fees or imposing conditions that would otherwise apply if the animal were merely a pet.

The bill requires the following medical professionals, when approached by a patient seeking an assistance animal, to make a written finding regarding whether the patient has a disability and whether the need for the animal is related to that disability, or that there is insufficient evidence to make a disability determination:

- ! Physicians, physician assistants, and anesthesiologist assistants (**section 1** of the bill);
- ! Nurses (**section 2**); and
- ! Psychologists, social workers, clinical social workers, marriage and family therapists, licensed professional counselors, and addiction counselors (**section 3**).

**Section 4** creates a class 1 petty offense for intentional misrepresentation of entitlement to an assistance animal.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-36-142 as  
3 follows:

4 **12-36-142. Licensee duties relating to assistance animals -**  
5 **definitions.** (1) A LICENSEE WHO IS APPROACHED BY A PATIENT SEEKING  
6 AN ASSISTANCE ANIMAL AS A REASONABLE ACCOMMODATION IN HOUSING  
7 SHALL EITHER:

8 (a) MAKE A WRITTEN FINDING REGARDING WHETHER THE PATIENT  
9 HAS A DISABILITY AND, IF A DISABILITY IS FOUND, A SEPARATE WRITTEN  
10 FINDING REGARDING WHETHER THE NEED FOR THE ANIMAL IS RELATED TO  
11 THAT DISABILITY; OR

12 (b) MAKE A WRITTEN FINDING THAT THERE IS INSUFFICIENT  
13 INFORMATION AVAILABLE TO MAKE A FINDING REGARDING DISABILITY.

14 (2) THIS SECTION DOES NOT:

15 (a) CHANGE ANY LAWS OR PROCEDURES RELATED TO A SERVICE  
16 ANIMAL;

1 (b) AFFECT IN ANY WAY THE RIGHT OF PET OWNERSHIP IN PUBLIC  
2 HOUSING ESTABLISHED IN 42 U.S.C. SEC. 1437Z-3, AS AMENDED; OR

3 (c) LIMIT THE MEANS BY WHICH A PERSON WITH A DISABILITY MAY  
4 DEMONSTRATE, PURSUANT TO STATE OR FEDERAL LAW, THAT THE PERSON  
5 HAS A DISABILITY OR THAT THE PERSON HAS A DISABILITY-RELATED NEED  
6 FOR AN ASSISTANCE ANIMAL.

7 (3) A LICENSEE SHALL NOT MAKE A DETERMINATION RELATED TO  
8 SUBSECTION (1) OF THIS SECTION UNLESS THE LICENSEE:

9 (a) HAS MET WITH THE PATIENT IN PERSON OR BY TELEMEDICINE;

10 (b) IS SUFFICIENTLY FAMILIAR WITH THE PATIENT AND THE  
11 DISABILITY; AND

12 (c) IS LEGALLY AND PROFESSIONALLY QUALIFIED TO MAKE THE  
13 DETERMINATION.

14 (4) FOR PURPOSES OF THIS SECTION:

15 (a) "ASSISTANCE ANIMAL" MEANS AN ANIMAL, OTHER THAN A  
16 SERVICE ANIMAL, THAT QUALIFIES AS A REASONABLE ACCOMMODATION  
17 UNDER THE FEDERAL "FAIR HOUSING ACT", 42 U.S.C. SEC. 3601 ET SEQ.,  
18 AS AMENDED, OR SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF  
19 1973", 29 U.S.C. SEC. 794, AS AMENDED.

20 (b) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE  
21 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
22 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING  
23 REGULATIONS.

24 (c) "SERVICE ANIMAL" HAS THE SAME MEANING AS SET FORTH IN  
25 THE IMPLEMENTING REGULATIONS OF TITLE II AND TITLE III OF THE  
26 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
27 12101 ET SEQ.

1           **SECTION 2.** In Colorado Revised Statutes, **add** 12-38-132.5 as  
2 follows:

3           **12-38-132.5. Licensee duties relating to assistance animals -**  
4 **definitions.** (1) A LICENSEE WHO IS APPROACHED BY A PATIENT SEEKING  
5 AN ASSISTANCE ANIMAL AS A REASONABLE ACCOMMODATION IN HOUSING  
6 SHALL EITHER:

7           (a) MAKE A WRITTEN FINDING REGARDING WHETHER THE PATIENT  
8 HAS A DISABILITY AND, IF A DISABILITY IS FOUND, A SEPARATE WRITTEN  
9 FINDING REGARDING WHETHER THE NEED FOR THE ANIMAL IS RELATED TO  
10 THAT DISABILITY; OR

11           (b) MAKE A WRITTEN FINDING THAT THERE IS INSUFFICIENT  
12 INFORMATION AVAILABLE TO MAKE A FINDING REGARDING DISABILITY.

13           (2) THIS SECTION DOES NOT:

14           (a) CHANGE ANY LAWS OR PROCEDURES RELATED TO A SERVICE  
15 ANIMAL;

16           (b) AFFECT IN ANY WAY THE RIGHT OF PET OWNERSHIP IN PUBLIC  
17 HOUSING ESTABLISHED IN 42 U.S.C. SEC. 1437Z-3, AS AMENDED; OR

18           (c) LIMIT THE MEANS BY WHICH A PERSON WITH A DISABILITY MAY  
19 DEMONSTRATE, PURSUANT TO STATE OR FEDERAL LAW, THAT THE PERSON  
20 HAS A DISABILITY OR THAT THE PERSON HAS A DISABILITY-RELATED NEED  
21 FOR AN ASSISTANCE ANIMAL.

22           (3) A LICENSEE SHALL NOT MAKE A DETERMINATION RELATED TO  
23 SUBSECTION (1) OF THIS SECTION UNLESS THE LICENSEE:

24           (a) HAS MET WITH THE PATIENT IN PERSON;

25           (b) IS SUFFICIENTLY FAMILIAR WITH THE PATIENT AND THE  
26 DISABILITY; AND

27           (c) IS LEGALLY AND PROFESSIONALLY QUALIFIED TO MAKE THE

1 DETERMINATION.

2 (4) FOR PURPOSES OF THIS SECTION:

3 (a) "ASSISTANCE ANIMAL" MEANS AN ANIMAL, OTHER THAN A  
4 SERVICE ANIMAL, THAT QUALIFIES AS A REASONABLE ACCOMMODATION  
5 UNDER THE FEDERAL "FAIR HOUSING ACT", 42 U.S.C. SEC. 3601 ET SEQ.,  
6 AS AMENDED, OR SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF  
7 1973", 29 U.S.C. SEC. 794, AS AMENDED.

8 (b) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE  
9 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
10 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING  
11 REGULATIONS.

12 (c) "SERVICE ANIMAL" HAS THE SAME MEANING AS SET FORTH IN  
13 THE IMPLEMENTING REGULATIONS OF TITLE II AND TITLE III OF THE  
14 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
15 12101 ET SEQ.

16 **SECTION 3.** In Colorado Revised Statutes, **add** 12-43-226.5 as  
17 follows:

18 **12-43-226.5. Licensee duties relating to assistance animals -**  
19 **definitions.** (1) A LICENSEE WHO IS APPROACHED BY A PATIENT SEEKING  
20 AN ASSISTANCE ANIMAL AS A REASONABLE ACCOMMODATION IN HOUSING  
21 SHALL EITHER:

22 (a) MAKE A WRITTEN FINDING REGARDING WHETHER THE PATIENT  
23 HAS A DISABILITY AND, IF A DISABILITY IS FOUND, A SEPARATE WRITTEN  
24 FINDING REGARDING WHETHER THE NEED FOR THE ANIMAL IS RELATED TO  
25 THAT DISABILITY; OR

26 (b) MAKE A WRITTEN FINDING THAT THERE IS INSUFFICIENT  
27 INFORMATION AVAILABLE TO MAKE A FINDING REGARDING DISABILITY.

- 1           (2) THIS SECTION DOES NOT:
- 2           (a) CHANGE ANY LAWS OR PROCEDURES RELATED TO A SERVICE
- 3 ANIMAL;
- 4           (b) AFFECT IN ANY WAY THE RIGHT OF PET OWNERSHIP IN PUBLIC
- 5 HOUSING ESTABLISHED IN 42 U.S.C. SEC. 1437Z-3, AS AMENDED; OR
- 6           (c) LIMIT THE MEANS BY WHICH A PERSON WITH A DISABILITY MAY
- 7 DEMONSTRATE, PURSUANT TO STATE OR FEDERAL LAW, THAT THE PERSON
- 8 HAS A DISABILITY OR THAT THE PERSON HAS A DISABILITY-RELATED NEED
- 9 FOR AN ASSISTANCE ANIMAL.
- 10          (3) A LICENSEE SHALL NOT MAKE A DETERMINATION RELATED TO
- 11 SUBSECTION (1) OF THIS SECTION UNLESS THE LICENSEE:
- 12          (a) HAS MET WITH THE PATIENT IN PERSON;
- 13          (b) IS SUFFICIENTLY FAMILIAR WITH THE PATIENT AND THE
- 14 DISABILITY; AND
- 15          (c) IS LEGALLY AND PROFESSIONALLY QUALIFIED TO MAKE THE
- 16 DETERMINATION.
- 17          (4) FOR PURPOSES OF THIS SECTION:
- 18          (a) "ASSISTANCE ANIMAL" MEANS AN ANIMAL, OTHER THAN A
- 19 SERVICE ANIMAL, THAT QUALIFIES AS A REASONABLE ACCOMMODATION
- 20 UNDER THE FEDERAL "FAIR HOUSING ACT", 42 U.S.C. SEC. 3601 ET SEQ.,
- 21 AS AMENDED, OR SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF
- 22 1973", 29 U.S.C. SEC. 794, AS AMENDED.
- 23          (b) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
- 24 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
- 25 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
- 26 REGULATIONS.
- 27          (c) "SERVICE ANIMAL" HAS THE SAME MEANING AS SET FORTH IN

1 THE IMPLEMENTING REGULATIONS OF TITLE II AND TITLE III OF THE  
2 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
3 12101 ET SEQ.

4 **SECTION 4.** In Colorado Revised Statutes, **add** 18-13-107.5 as  
5 follows:

6 **18-13-107.5. Intentional misrepresentation of entitlement to**  
7 **an assistance animal - penalty - definitions.** (1) A PERSON COMMITS  
8 INTENTIONAL MISREPRESENTATION OF ENTITLEMENT TO AN ASSISTANCE  
9 ANIMAL IF:

10 (a) THE PERSON INTENTIONALLY MISREPRESENTS ENTITLEMENT TO  
11 AN ANIMAL IN HIS OR HER POSSESSION AS AN ASSISTANCE ANIMAL FOR THE  
12 PURPOSE OF OBTAINING ANY OF THE RIGHTS OR PRIVILEGES SET FORTH IN  
13 STATE OR FEDERAL LAW FOR AN INDIVIDUAL WITH A DISABILITY AS A  
14 REASONABLE ACCOMMODATION IN HOUSING; AND

15 (b) THE PERSON KNOWS THAT:

16 (I) THE ANIMAL IS NOT AN ASSISTANCE ANIMAL WITH REGARD TO  
17 THAT PERSON; OR

18 (II) THE PERSON DOES NOT HAVE A DISABILITY.

19 (2) A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION  
20 COMMITS A CLASS 1 PETTY OFFENSE AND, UPON CONVICTION, SHALL BE  
21 PUNISHED AS FOLLOWS:

22 (a) FOR A FIRST OFFENSE, A FINE OF NOT LESS THAN THREE  
23 HUNDRED FIFTY DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS;

24 (b) FOR A SECOND OFFENSE, A FINE OF NOT LESS THAN SIX  
25 HUNDRED DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS; AND

26 (c) FOR A THIRD OR SUBSEQUENT OFFENSE, A FINE OF NOT LESS  
27 THAN ONE THOUSAND DOLLARS BUT NOT MORE THAN FIVE THOUSAND

1 DOLLARS, IN ADDITION TO NOT MORE THAN TEN HOURS OF COMMUNITY  
2 ASSISTANCE.

3 (3) (a) A DEFENDANT MAY PETITION THE DISTRICT COURT OF THE  
4 DISTRICT IN WHICH ANY CONVICTION RECORDS PERTAINING TO THE  
5 DEFENDANT'S FIRST CONVICTION FOR INTENTIONAL MISREPRESENTATION  
6 OF ENTITLEMENT TO AN ASSISTANCE ANIMAL, AS DESCRIBED IN  
7 SUBSECTION (1) OF THIS SECTION, ARE LOCATED FOR THE SEALING OF THE  
8 CONVICTION RECORDS, EXCEPT FOR BASIC IDENTIFYING INFORMATION.

9 (b) IF A PETITION IS FILED PURSUANT TO PARAGRAPH (a) OF THIS  
10 SUBSECTION (3) FOR THE SEALING OF A RECORD OF CONVICTION FOR  
11 INTENTIONAL MISREPRESENTATION OF ENTITLEMENT TO AN ASSISTANCE  
12 ANIMAL, THE COURT SHALL ORDER THE RECORD SEALED IF THE FOLLOWING  
13 CRITERIA ARE MET:

14 (I) THE PETITION IS FILED;

15 (II) THE FILING FEE IS PAID;

16 (III) THE DEFENDANT'S FIRST CONVICTION FOR INTENTIONAL  
17 MISREPRESENTATION OF ENTITLEMENT TO AN ASSISTANCE ANIMAL WAS AT  
18 LEAST THREE YEARS PRIOR TO THE DATE OF THE FILING OF THE PETITION;  
19 AND

20 (IV) THE DEFENDANT HAS NOT HAD A SUBSEQUENT CONVICTION  
21 FOR INTENTIONAL MISREPRESENTATION OF ENTITLEMENT TO AN  
22 ASSISTANCE ANIMAL.

23 (c) AN ORDER ENTERED PURSUANT TO THIS SUBSECTION (3) MUST  
24 BE DIRECTED TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART  
25 OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER.  
26 WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS  
27 PURSUANT TO THIS SUBSECTION (3), THE DEFENDANT SHALL PROVIDE THE



1 COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE  
2 CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE  
3 BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL  
4 CONVICTION RECORDS THAT ARE IN THE CUSTODY OF THE BUREAU.  
5 THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT  
6 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS  
7 WERE SEALED.

8 (4) A WRITTEN FINDING MADE PURSUANT TO SECTION 12-36-142  
9 (1) (a), 12-38-132.5 (1) (a), OR 12-43-226.5 (1) (a), C.R.S., IS AN  
10 AFFIRMATIVE DEFENSE TO THE OFFENSE ESTABLISHED BY THIS SECTION.  
11 THE LACK OF SUCH A FINDING IS NOT PROOF OF THE OFFENSE ESTABLISHED  
12 BY THIS SECTION, AND NOTHING IN THIS SECTION OR IN SECTIONS  
13 12-36-142, 12-38-132.5, OR 12-43-226.5, C.R.S., LIMITS THE MEANS BY  
14 WHICH A PERSON WITH A DISABILITY MAY DEMONSTRATE, PURSUANT TO  
15 STATE OR FEDERAL LAW, THAT THE PERSON HAS A DISABILITY OR THAT  
16 THE PERSON HAS A DISABILITY-RELATED NEED FOR AN ASSISTANCE  
17 ANIMAL.

18 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
19 REQUIRES:

20 (a) "ASSISTANCE ANIMAL" MEANS AN ANIMAL, OTHER THAN A  
21 SERVICE ANIMAL, THAT QUALIFIES AS A REASONABLE ACCOMMODATION  
22 UNDER THE FEDERAL "FAIR HOUSING ACT", 42 U.S.C. SEC. 3601 ET SEQ.,  
23 AS AMENDED OR SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF  
24 1973", 29 U.S.C. SEC. 794, AS AMENDED.

25 (b) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE  
26 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
27 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING

1 REGULATIONS.

2 (c) "SERVICE ANIMAL" HAS THE SAME MEANING AS SET FORTH IN  
3 THE IMPLEMENTING REGULATIONS OF TITLE II AND TITLE III OF THE  
4 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.  
5 12101 ET SEQ.

6 (d) "STATE AND FEDERAL LAW" INCLUDES SECTION 24-34-803,  
7 C.R.S., THE FEDERAL LAWS SPECIFIED IN PARAGRAPH (a) OF THIS  
8 SUBSECTION (5), AND RULES AND REGULATIONS IMPLEMENTING THOSE  
9 LAWS.

10 **SECTION 5. Act subject to petition - effective date.** This act  
11 takes effect at 12:01 a.m. on the day following the expiration of the  
12 ninety-day period after final adjournment of the general assembly (August  
13 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a  
14 referendum petition is filed pursuant to section 1 (3) of article V of the  
15 state constitution against this act or an item, section, or part of this act  
16 within such period, then the act, item, section, or part will not take effect  
17 unless approved by the people at the general election to be held in  
18 November 2016 and, in such case, will take effect on the date of the  
19 official declaration of the vote thereon by the governor.